

In the Matter Of:

*Page 1 KELLI DENISE GOODE vs
CITY OF SOUTHAVEN
2:16-cv-02029*

*CYRIL WECHT
March 21, 2017*



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1 DEPOSITION OF CYRIL H. WECHT, M.D., J.D.,
2 a witness herein, called by the Defendant, Jemuel
3 Donja Oliver, MD, taken pursuant to the Federal Rules
4 of Civil Procedure, by and before Kathy D. Landock, a
5 Registered Merit Reporter, Certified Realtime
6 Reporter and a Notary Public in and for the
7 Commonwealth of Pennsylvania, at 1119 Penn Avenue,
8 Suite 404, Pittsburgh, PA 15222, on Tuesday,
9 March 21, 2017 commencing at 9:09 a.m.

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P R O C E E D I N G S

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CYRIL H. WECHT, M.D., J.D.,
having been first duly sworn, was examined and
testified as follows:

- - -

E X A M I N A T I O N

BY MR. PHILLIPS:

Q. Tell us your name, please, sir.

A. Cyril H. Wecht.

Q. Dr. Wecht, your CV indicates you had a
birthday yesterday; is that right?

A. Yes.

Q. Happy belated birthday.

A. Thank you.

Q. You were 86 yesterday?

A. Yes.

Q. Did you do a private autopsy on Trey Goode?

A. Yes.

Q. I said Trey. Excuse me, Troy Goode.

A. Yes.

Q. Where was that done?

A. Carlow University, where I do all my
autopsies. It's about ten minutes from here, what we
call the Oakland section of town, toward the

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1 universities.

2 Q. The report that we've been submitted in this
3 case for you indicates that that autopsy was done on
4 July 20, 2015. Is that date correct?

5 A. Yes. I believe you still have some records
6 down there. May I see those?

7 July 23, 2015, correct.

8 Q. I'm sorry, what date did you say?

9 A. July 23, 2015.

10 Q. In the letter dated December 5, 2016 to
11 Mr. Edwards, which has been provided to us as part of
12 your disclosure, on page 3 of that letter it says
13 postmortem exam on July 20, 2015, Dr. Wecht's
14 autopsy, and then it lists a number.

15 A. Then that's incorrect. The correct date is
16 July 23, because that's what was dictated right by me
17 at the autopsy.

18 Q. Do you know how the date of July 20 came to
19 be included in the report?

20 A. Can I see that letter, please?

21 Q. Sure.

22 A. Is this the page here?

23 Q. Yes, sir. See at the very bottom where it
24 references postmortem.

25 A. The answer is it's a mistake. The report

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1 that I sent him on December 5, 2016, my mistake or my
2 secretary's mistake, but the correct date is July 23.

3 Q. Did you list a time that you performed the
4 autopsy?

5 A. It says here 3:30 p.m., that's eastern
6 standard time.

7 Q. Is that the time it was commenced or
8 completed?

9 A. That's when it started.

10 Q. How long did it take?

11 A. Oh, I don't know, usually about an hour and
12 a half in a case like this.

13 Q. Did anybody assist you with the autopsy?

14 A. Yes. I have an assistant, Joseph Mancuso,
15 my long time assistant.

16 Q. What is Mr. Mancuso's training?

17 A. He's trained as a pathology assistant. He
18 is a licensed funeral director. He's a licensed
19 embalmer. And he's then been doing autopsies for
20 about 40 years or so, as an assistant.

21 Q. What did he actually do with regard to
22 Mr. Goode's autopsy?

23 A. He helps me with -- he does the heavy
24 lifting with the body. And then he will do a lot of
25 physical things, getting the body ready, take it out

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1 of the Zeigler case in which it had been submitted;
2 and in this case taking apart the strings from the
3 previous autopsy and looking at the organs and so on.
4 Those are the things that he does.

5 Q. Would he have any role in providing any
6 gross description or microscopic description?

7 A. No.

8 Q. All of that would have been done by you?

9 A. Yes.

10 Q. Was the body embalmed when it came to you?

11 A. No.

12 Q. Do you recall or can you tell us when you
13 were first contacted about this matter?

14 A. It would have been as I recall then by phone
15 from Mr. Edwards probably a few days before the body
16 was sent to me. So I would just say it could have
17 been around July 20, a day or two possibly earlier.
18 Sometime around there.

19 Q. Sometime around July 20 you think?

20 A. Yeah, a few days prior to the body being
21 shipped to me.

22 Q. Do you recognize that document, sir?

23 A. Yes. This is the authorization for the
24 autopsy.

25 Q. Does it bear a fax date at the top?

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1 A. July 21, 2015.

2 Q. The authorization is signed by Mrs. Goode
3 and also an attorney; is that right?

4 A. Yes.

5 MR. PHILLIPS: Mark the authorization as
6 Exhibit No. 1.

7 (Deposition Exhibit No. 1 was marked for
8 identification.)

9 BY MR. PHILLIPS:

10 Q. When you were initially contacted by
11 Mr. Edwards, what information were you given?

12 A. I don't recall specifically, but my
13 recollection is I was told that this was a young man
14 who had the basics; had gone to a concert with his
15 wife and friends and then had some behavioral
16 problems afterwards; I'm not sure if I was told then
17 that he had taken LSD, I probably was; and then he
18 was arrested, and that he died sometime thereafter
19 within a couple of hours after being in police
20 custody; and then an autopsy had been done there and
21 the family wanted a second autopsy.

22 Q. Were you given any information about the
23 manner in which he was restrained?

24 A. At that time, I don't think so. I do
25 believe some comment was made about his having been

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1 restrained, but not in the kind of detail that I
2 subsequently came to learn.

3 Q. At the time that you did the autopsy on July
4 23, had you been provided any records to review about
5 Mr. Goode?

6 A. No. As I recall, I did not have the records
7 at that time.

8 Q. Did you prepare an autopsy report?

9 A. Yes.

10 Q. Do you have any idea why it has not been
11 previously provided to us before today?

12 A. You would have to speak to Mr. Edwards about
13 that.

14 Q. Do you have your autopsy report in front of
15 you?

16 A. Yes.

17 MR. PHILLIPS: I would like to mark it as
18 Exhibit No. 2, please. I'm happy to make whatever
19 accommodations we need to, doctor, with regard to
20 copies and all so you have a complete file when we
21 leave.

22 THE WITNESS: What did you say, the second
23 part?

24 BY MR. PHILLIPS:

25 Q. I'm happy to make any accommodations for

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1 copying.

2 A. I can have it copied now.

3 Q. I would rather not stop.

4 A. You want to refer to it?

5 Q. Yes. We can substitute a copy later.

6 (Deposition Exhibit No. 2 was marked for
7 identification.)

8 BY MR. PHILLIPS:

9 Q. Did you let Mr. Edwards or Mr. McCormack
10 know that you had prepared an autopsy report?

11 A. Yes, best of my recollection is it would
12 have been sent to Mr. Edwards.

13 Q. Do you have any correspondence showing that
14 the autopsy report was sent to counsel who retained
15 you?

16 A. Not specifically, no.

17 Q. I've not had a chance to read your autopsy
18 report, but in the report did you reach a conclusion,
19 did you state a conclusion as to the cause of death?

20 A. No, I did not.

21 Q. Why is that that you did not state a
22 conclusion as to the cause of death in your autopsy
23 report?

24 A. I did not find anything in the autopsy
25 itself that permitted me to give an anatomical

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1 pathological cause of death.

2 Also, I knew that an autopsy had been done.
3 I always want to see the original autopsy report. I
4 also knew the toxicology tests were being performed
5 there and that I was going to submit some stuff for
6 toxicology also.

7 So that's the way you handle it then,
8 pending further information, toxicology results and
9 clinical background.

10 Q. At the time of the autopsy you were able to
11 make a gross observation of the body and the organs;
12 right?

13 A. Yes.

14 Q. Meaning with the naked eye?

15 A. Yes.

16 Q. And you're also preparing slides that you'll
17 evaluate under the microscope?

18 A. Yes. I take pieces of tissue and submit
19 them to the histopathologist for preparation of
20 slides.

21 Q. And are you the one who actually analyzes
22 the slides?

23 A. Yes.

24 Q. Does your autopsy report, which we've marked
25 as Exhibit No. 2, describe what you saw on the

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1 microscopic examinations?

2 A. No, it does not.

3 Q. Is there anything that you have prepared
4 that would tell us how you interpreted the slides?

5 A. I don't know if anything specific is there
6 in terms of findings because there wasn't anything of
7 a definitive nature insofar as determining cause of
8 death.

9 Yes, if you'll look on page 4 of my autopsy
10 report you'll see the statement 29 H and E, this
11 refers to the kind of stain, stain slides labeled CHW
12 15-275 T. Goode show autolyzed organs without any
13 specific histopathologic alterations.

14 So that sums it up, there wasn't anything of
15 a specific relevant nature insofar as determining
16 cause of death is concerned.

17 Q. Do I understand correctly then, Dr. Wecht,
18 that based upon your gross description and your
19 findings at autopsy you could not reach a conclusion
20 as to cause of death; right?

21 A. Yes.

22 Q. And based upon your analysis of the
23 pathology slides, you could not reach a conclusion as
24 to cause of death?

25 A. I could not.

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1 Q. On that page to which you just referenced
2 from your report, it's the letter dated December 5,
3 2016 to Mr. Edwards, you give a reference to this
4 particular case, CHW. Do you see that?

5 A. Yes.

6 Q. That's because you're the one who did the
7 autopsy, those are your initials?

8 A. Yes.

9 Q. And then 15, is that the year of the exam?

10 A. Yes.

11 Q. And what does 275 mean?

12 A. That was the number of the autopsy as of
13 that time.

14 Q. For the year 2015?

15 A. As of July 23, yes.

16 Q. So that would mean that Mr. Goode's autopsy
17 was the 275th autopsy you had done that year; is that
18 right?

19 A. Up until July 23, yes.

20 Q. Sure, at the time you assigned the number?

21 A. Yes.

22 Q. Did you talk to anyone besides Mr. Edwards
23 before doing the autopsy?

24 A. No.

25 Q. Did you ultimately get a copy of the autopsy

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1 report prepared by the Mississippi medical examiner?

2 A. Yes.

3 Q. Do you know when you received that?

4 A. No, I do not have a date showing the time
5 that I received that report.

6 Q. Do you know at what point in time you did
7 reach a conclusion as to cause of death?

8 A. Yes. It would have been sometime shortly
9 before I submitted my report, some days. But once I
10 conclude things, then I go about and I submit the
11 report.

12 The report was submitted, my narrative
13 report, to Mr. Edwards dated December 5, 2016. So I
14 would say probably sometime after Thanksgiving, at
15 the end of November and going into the first couple
16 days of December, that's when I would have finalized
17 everything and prepared a report, because once I put
18 everything together, then that's the time I do the
19 final report.

20 Q. And you would not have reached a conclusion
21 as to cause of death until then?

22 A. I might have had some thoughts, I'm sure I
23 did, but I would say that I would not have reached a
24 final conclusion until I had reviewed everything and
25 thought it through and so on until around the time

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1 that I sent it.

2 Q. I want you to assume that Mr. Edwards
3 provided a statement to the press on November 18,
4 2015 in which he said that he had made arrangements
5 for an independent autopsy and that he had been in
6 possession of the doctor's opinion for months.

7 A. I'm sorry, what was the date of that.

8 Q. November 18, 2015.

9 A. The statement was what?

10 Q. The statement was made on November 18, 2015
11 that he had made arrangements for an independent
12 autopsy to be performed and that he had been in
13 possession of the doctor's opinions for months.

14 MR. EDWARDS: Object to the form.

15 BY MR. PHILLIPS:

16 Q. Is that an accurate statement, as far as you
17 know?

18 A. I can't speak for Mr. Edwards. I'm sure
19 that I would have talked with him. As to what he
20 concluded or inferred from any comments that I made,
21 I can't tell you.

22 I can only tell you that my recollection is
23 based upon really more a matter of my modus operandi
24 than a specific chronological recollection down to
25 the day or even the specific week, that when I get

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1 around to writing the written report it's pretty darn
2 close to when I have finalized things in my mind,
3 because I'm pretty active and got a lot of reports to
4 do and so on, so it doesn't make sense for me to
5 think things through and then come back to them weeks
6 or months later.

7 It may well be that I discussed with
8 Mr. Edwards after having received information of the
9 background of this event and discussion about what
10 had transpired and then referring to the original
11 autopsy report that I may well have told him what I
12 was thinking. That certainly is quite possible and
13 logical.

14 As to what Mr. Edwards chose to say, I can't
15 tell you. Attorneys say things whenever they want to
16 for their purposes, as all of you gentlemen I'm sure
17 know. How that relates to the rest of reality and
18 the rest of the world involved in the matter, that's
19 something that I can't deal with. That's part of the
20 legal process.

21 Q. As of December 5, 2016 when you wrote this
22 report to which you made reference earlier, had you
23 reviewed the autopsy report from the Mississippi
24 medical examiner?

25 A. When I submitted my report on December 5, is

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1 that your question?

2 Q. Yes, sir. By that time had you reviewed the
3 autopsy report from the Mississippi medical examiner?

4 A. I'm trying to see here. Because you asked
5 me earlier when had I received it, and I told you I
6 don't know. I'm looking at my report to see if I
7 refer to that initial autopsy report. I do not.

8 That kind of suggests to me, I can't be
9 positive, but it kind of suggests to me that I had
10 not received it, although I don't see why I would not
11 have received it. I just can't be certain. Usually,
12 however, I would mention what had been issued in such
13 a report, and I see no such reference.

14 Q. In fact, in your December 5, 2016 letter to
15 Mr. Edwards there's not a reference to the autopsy
16 report from Mississippi, is there?

17 A. That is correct.

18 Q. Are you telling us that it would be your
19 practice to make reference to it if you had received
20 it and reviewed it up until that point?

21 A. Usually I do. It's not any rigid,
22 self-imposed rule, but much more often, most often I
23 do make reference to an earlier autopsy report.

24 Q. Did you do toxicology studies yourself or
25 have them done?

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1 A. I submitted stuff for toxicology. I myself,
2 I'm not a toxicologist, I don't do the testing.

3 Q. Yes, sir, but you retrieved samples and
4 submitted them for analysis; is that right?

5 A. Yes, I did.

6 Q. Do you have copies of the toxicology studies
7 there?

8 A. Yes, I do.

9 Q. Have you provided that to anybody before
10 today?

11 A. Again, I would think that I had passed this
12 on to Mr. Edwards, but I cannot say for certain
13 because I do not have such a covering letter.

14 Q. May I see the toxicology reports?

15 A. Wait a minute, this one does say to
16 Mr. Edwards on August 14, 2016. So I correct what I
17 just said, there is a cover letter for this.

18 Q. Is this the entirety of the toxicology
19 analysis that you had done?

20 A. Not that I had done. That's the entirety of
21 their report.

22 Q. Yes, sir. But you requested them to do the
23 analysis is my point?

24 A. Oh, yes. Of course.

25 Q. That's the entirety of the report you got

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1 back?

2 A. Yes. This is all I have, from the liver
3 tissue that I submitted to them.

4 MR. PHILLIPS: Let's mark this as Exhibit
5 No. 3.

6 (Deposition Exhibit No. 3 was marked for
7 identification.)

8 BY MR. PHILLIPS:

9 Q. Are you able to tell when you received the
10 toxicology results that we've marked at Exhibit
11 No. 3, Dr. Wecht?

12 A. Well, they should have a date on their
13 report. Their report, report issued it says here
14 August 4, 2015.

15 Q. Can you tell us when you received it then?

16 A. Well, usually it takes a day or two in the
17 mail. A couple days usually it comes in. So it
18 would have been August 5, August 6, something like
19 that.

20 Q. The specimens that were taken would have
21 been drawn on July 23 at the time of your autopsy;
22 right?

23 A. Yes. Not drawn because there were no body
24 fluids. It was liver tissue that was submitted and
25 brain tissue. I submitted liver, kidney and brain to

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1 them. They chose to do tests on liver.

2 Q. So there's no blood submitted?

3 A. No.

4 Q. Why is that?

5 A. Because the body had already been autopsied.
6 There was no blood. Any little seepage that remained
7 would have been exposed and any results would not be
8 valid because whatever seepage there was also would
9 have been a confluence of fluid from who knows where
10 in the body. So there's no way you can submit blood
11 in a case like this.

12 Q. Does that impede at all the ability to do a
13 toxicology analysis if one is drawing a specimen or
14 retrieving a specimen about five days after death as
15 opposed to doing it shortly after death?

16 A. No. Within a matter of a few days, you
17 don't need blood. It's always best to have urine and
18 blood and bile from the gallbladder in a fresh case,
19 but you can get body organs and tissues, and if they
20 have not been embalmed, then you can get a reliable
21 test from tissues.

22 The liver is the source of metabolism for
23 most of the drugs in the body, and that's why that is
24 the organ of preference for the toxicology lab to
25 test.

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1 Q. What did that report indicate with regard to
2 the toxicology analysis?

3 A. Just a positive test for a metabolite of
4 some kind, Beta-Phenethylamine and Delta-9 Carboxy
5 THC, Tetrahydrocannabinol, 870 nanograms per gram.

6 Q. Is that the active ingredient in marijuana?

7 A. No. I believe it's an inactive. Delta-9,
8 this is an inactive metabolite. Delta-9 Carboxy
9 THC is an inactive metabolite and so stated, by the
10 way, in the autopsy report. It's not my subjective
11 interpretation.

12 It's Delta-9 THC that is the active
13 metabolite. Delta-9 Carboxy THC is an inactive
14 metabolite.

15 Q. From marijuana?

16 A. Yes.

17 Q. What else did it show?

18 A. Well, as I referred to, some
19 Beta-Phenethylamine, which is I think just -- I'm not
20 sure from which drug it comes. It's not one of the
21 toxic drugs.

22 Q. Any other positive findings?

23 A. No, not in this report, no.

24 Q. Did you have made available to you the
25 toxicology report that was done in Mississippi?

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1 A. Yes.

2 Q. What is the date on the toxicology report
3 from Mississippi?

4 A. September 17, 2015.

5 Q. September what?

6 A. 17, 2015.

7 Q. Thank you.

8 Do you know when you received that report?

9 A. No, I have no specific date when it was
10 submitted to me. Hold on. No, I was thinking about
11 photos that came in later. No, I cannot tell you the
12 date when I received it from Mr. Edwards.

13 Q. In your report, which is your letter of
14 December 5, 2016 to Mr. Edwards, did you make any
15 reference at all to the toxicology report you had
16 received?

17 A. No, I don't believe so.

18 Q. Did you make any reference at all to the
19 toxicology report from Mississippi?

20 A. No, I see no specific reference.

21 Q. Isn't that something you would normally do,
22 make reference to the toxicology information and use
23 that as part of your analysis in your report?

24 A. I would if I felt that it was relevant. If
25 I felt that it had played any role in leading to the

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1 death, of course I would include it because it would
2 be a substantive, highly relevant component of such a
3 report. If it is of no consequence, then I might not
4 refer to it.

5 Q. Would it be your practice not even to
6 reference the fact it had been done?

7 A. I cannot tell you. Much of the time I will
8 reference it, sometimes for the reasons I just stated
9 I would not.

10 The other thing here is, I think you already
11 asked me when did I receive all of those things. I'm
12 just wondering, and I said I don't recall when I
13 received everything, including the autopsy report
14 from Mississippi, of which the toxicology report is
15 an integral component.

16 So I'm not sure if I had it at that time. I
17 probably did have it because I, of course, discussed
18 in conclusions of my report whether LSD was a cause
19 of death or contributed to the death. So I can't be
20 certain.

21 But as I've already said, those
22 toxicological findings from the same laboratory,
23 National Medical Services, on the report, on the
24 original autopsy report, I find nothing there that is
25 of substantive significance to my analysis of the

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1 case, specifically in determining the cause of this
2 man's death.

3 Q. Does the Mississippi toxicology report give
4 an LSD concentration, does it report an LSD
5 concentration?

6 A. Yes, it does.

7 Q. Would you look at page 4 of your report
8 dated December 5, 2016.

9 A. Yes.

10 Q. Next to the last -- well, three paragraphs
11 from the bottom, second sentence, you state, I do not
12 find any LSD concentration reported for Mr. Troy
13 Goode.

14 Did you make that statement?

15 A. Yes. And I'm referring to the NMS report
16 that I had received, that is correct.

17 Q. Did you not have the Mississippi toxicology
18 report?

19 A. My answer is as I gave it two minutes ago, I
20 kind of think I did not because I did not refer to it
21 at all, but I cannot be absolutely certain because I
22 don't have the date when I received that material.

23 Q. You made a conclusion about LSD without
24 knowing the concentration of LSD in Mr. Goode's body
25 at the time of death, didn't you?

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1 A. That indeed may be possible. Again, I
2 referred to the NMS report which I had received.

3 Q. Other than your report which we've marked as
4 an exhibit regarding the autopsy, Exhibit No. 2, did
5 you make any notes pertaining to the autopsy?

6 A. No.

7 Q. Did you take any photographs?

8 A. No.

9 Q. Any videotapes?

10 A. No. I dictate -- no, sorry. Video, no,
11 there are no videos.

12 Q. Is it typical to take photographs at the
13 time of autopsy?

14 A. That varies from one office to another.
15 Some offices, the larger medical examiner coroner's
16 offices routinely take photos.

17 In my case when photos are deemed relevant,
18 they are taken usually by the state police or
19 detectives attending the autopsy. Sometimes I will
20 take photos myself in private autopsies when they are
21 relevant. If the photos are not going to be
22 relevant, I do not take photos.

23 Q. Did you write any letter reporting your
24 findings other than the December 5, 2016 letter to
25 Mr. Edwards?

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1 A. No, I have no such letter.

2 Q. Tell me if you recognize that document.

3 A. This looks like the report that I submitted
4 to Mr. Edwards. Yes, it appears to be exactly the
5 same thing.

6 Q. What is the date on that letter?

7 A. September 28, 2015.

8 Q. Is that your letter?

9 A. Yes.

10 MR. EDWARDS: May I ask where you got this?

11 MR. PHILLIPS: It's in the Sun Life records.

12 MR. EDWARDS: Preliminary reports are not
13 discoverable under the federal rules. I believe
14 that's what that is.

15 BY MR. PHILLIPS:

16 Q. Is this your report regarding your findings
17 pertaining to Mr. Troy Goode?

18 A. Yes. It appears to be exactly my report. I
19 don't see any changes. Number of pages, jumping to
20 the end. Yes, it definitely came from me, and it
21 appears to be the same.

22 Q. So when you told us earlier that you didn't
23 reach a conclusion as to the cause of death until
24 maybe end of November, early December 2016, was that
25 an error on your part?

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1 A. Yes. Obviously, then I had reached a
2 conclusion in September. Of course that explains why
3 Mr. Edwards was making the public statement that he
4 did.

5 Q. Do you know why this is designated work
6 product at the top?

7 A. Yes. I submitted it to Mr. Edwards for him
8 to look at to see if there are any mistakes, any
9 errors, whether there was something that I had not
10 referred to. That's the reason it was sent to him.

11 Q. Was this report, and I'm referring to the
12 one dated September 28, 2015, was it in any way
13 designated as a preliminary report or draft report?

14 A. Well, referred to as work product. So to me
15 that's synonymous with a draft report or a
16 preliminary report or privileged, confidential.
17 Those terms are used by me synonymously to
18 characterize it as not the final written report.

19 Q. Is there any significant difference between
20 the letter of September 28, 2015 and your letter of
21 December 5, 2016?

22 A. No. I think I've stated a couple of times
23 already here today that my fast perusal, it is
24 exactly the same. I see no difference at all in
25 anything. Spacing looks to me to be exactly the same

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1 thing. No, it looks to me to be exactly the same.

2 MR. GASS: Are you both looking at December
3 reports?

4 MR. EDWARDS: This is September.

5 MR. GASS: And the one he was looking at?

6 MR. EDWARDS: December.

7 BY MR. PHILLIPS:

8 Q. The autopsy that you did on July 23, 2015,
9 how would it differ from the autopsy that was
10 performed by you as the first autopsy?

11 A. I don't know what you mean how it would
12 differ. Obviously, the organs have been resected
13 internally, brain and thoracic, abdominal organs. So
14 reopening those lines of incision, you don't see the
15 organs in situ.

16 External examination doesn't differ, what
17 somebody says they see and what I see; but as far as
18 the outside of the body is concerned, except for a
19 little bit of early discoloration or so on, but
20 basically the same, not exactly.

21 And then not seeing the organs in situ
22 obviously is different than the original autopsy.

23 MR. DILLARD: I'm sorry, what was the date
24 of that autopsy?

25 THE WITNESS: My autopsy?

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1 MR. DILLARD: Yes, sir. Was it the July 20?

2 THE WITNESS: July 23.

3 MR. EDWARDS: July 20 was the State of
4 Mississippi autopsy.

5 BY MR. PHILLIPS:

6 Q. So when you received the body, had the
7 organs been removed from the body?

8 A. Yes.

9 Q. So the organs came to you separate and apart
10 from the body?

11 A. Well, no, not separate. They're with the
12 body.

13 Q. But they had been removed from the body?

14 A. But they had been detached from their
15 respective soft tissue moorings.

16 A couple of things that I did that had not
17 been done, I removed the testes. I also removed --
18 as I recall, made a couple of additional incisions.
19 And then I also dissected musculature in the back,
20 the paravertebral musculature and soft tissues, and I
21 also removed the spinal cord. Otherwise, the organs
22 had been detached and submitted.

23 Q. Could you just list for us, please, the
24 organs that had been removed before the body came to
25 you?

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1 A. Brain, lungs, heart, liver, kidney,
2 pancreas, adrenal gland, bladder, prostate, spleen.
3 Those are the organs that are removed.

4 Q. Why didn't you go to Mississippi to do the
5 autopsy since the body was there?

6 A. I always have the body sent to me. It is
7 preferable for me to do the autopsy here. And I
8 always ask for the body to be sent to me, either
9 driven or sent by air.

10 It also is less expensive for the attorney,
11 but that's not my main reason or concern, but I
12 always do point that out to the attorney. But I have
13 bodies sent to me not that often, but several in the
14 course of the year every year. And they come to me,
15 most of them are from the areas around here where
16 they can be driven, but a couple or more will be sent
17 by air during the course of a year.

18 Q. You didn't find any indication in your
19 analysis of the lung tissue of any pulmonary disease,
20 did you?

21 A. No. Nothing that I could determine. As
22 I've already mentioned, both in the report and
23 discussing it today, tissue showed early autolysis,
24 decomposition, so there's some things of a specific
25 microscopic nature that might not be discernible, but

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1 I did not find anything grossly such as a tumor or
2 infarct or emphysema, did not find anything like
3 that.

4 Q. No evidence of asthma?

5 A. Well, I cannot tell you in terms of a severe
6 asthma producing some bronchiectasis or even
7 emphysematous change, the answer is I did not.

8 Whether there was some evidence
9 microscopically of the bronchial tree, I cannot
10 determine that because of early decomposition that
11 would change the mucosal appearance, that is the
12 lining, the mucosa of the airways.

13 Q. Did you find any ocular petechial
14 hemorrhages?

15 A. Externally on the conjunctiva, I did not and
16 I did not remove the eyes. But I saw no evidence of
17 -- you said ocular, didn't you?

18 Q. Yes, sir.

19 A. No, I saw no evidence of injuries to the
20 eyes.

21 Q. Did you find any facial petechial
22 hemorrhages?

23 A. No.

24 Q. Did you find any pleural petechial
25 hemorrhages?

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1 A. No.

2 Q. Were there any rib fractures?

3 A. Yes, there were -- well, no. I say here the
4 bony thorax appears to be intact on palpation except
5 for the postpartum incision. No, I saw no evidence
6 of rib fractures.

7 Q. Did you know the Mississippi medical
8 examiner reported rib fractures?

9 A. Yes, sir, I came to know that later on, and
10 I think they attributed that to resuscitation.

11 Q. Did you conclude that there were rib
12 fractures present or did you disagree with the
13 finding that there were rib fractures?

14 A. I've already told you that I did not find
15 rib fractures. The second part of your question, I
16 have no disagreement. They would appear to be the
17 kinds of fractures that we see many times in people
18 who have been resuscitated, right third through fifth
19 and through the seventh.

20 So no, I would not disagree with that,
21 especially when they say no associated soft tissue
22 hemorrhage. I would agree with that.

23 Q. When you do a private autopsy as you did on
24 July 23, 2015 on Troy Goode, what is the charge for
25 doing that?

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1 A. \$3,850 for the autopsy. And then -- that's
2 my charge. Then if they want toxicology then I
3 charge them whatever the amount is that NMS charges.
4 I think that may be \$800, and then the transportation
5 costs.

6 Mr. Edwards sent a check for \$6,475, and the
7 covering letter indicated that that was for autopsy,
8 toxicology and transportation of the decedent. My
9 charge is \$3,850 for a private autopsy.

10 Q. In the report that you prepared dated
11 December 5, 2016, the initial section, and I'm not
12 talking about the autopsy report, doctor, I'm talking
13 about your letter to Mr. Edwards dated December 5,
14 2016.

15 Do you have your letter to Mr. Edwards dated
16 December 5, 2016 in front of you?

17 A. I do.

18 Q. The information in the first five paragraphs
19 of the clinical summary, did that information come
20 from Mrs. Goode?

21 A. Well, it came to me from Mr. Edwards. I
22 cannot tell you where he obtained it. I had no
23 contact in any way by letter or phone with
24 Mrs. Goode. So everything I received came from
25 Mr. Edwards.

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1 Q. Do I understand you then to say that you
2 never talked to Mrs. Goode?

3 A. I have not talked with her, never have
4 talked with her.

5 Q. And you haven't received any information in
6 writing or otherwise from Mrs. Goode about the events
7 of July 18?

8 A. No. I think that one of the time lines
9 submitted as I recall referred to information from
10 Mrs. Goode, but again transmitted to me via
11 Mr. Edwards, not directly to me.

12 But my recollection is that one of the time
13 lines, because I received a couple of different time
14 lines, I just have a recollection that something was
15 according to Mrs. Goode.

16 So I'm sure that some of the information
17 came from her via Mr. Edwards, but not in personal
18 handwriting.

19 Q. Look at the September 28, 2016 letter you
20 wrote to Mr. Edwards, please. Do you see at the top
21 of page 2 you cite the source for the preceding
22 statements as being Mrs. Goode?

23 A. Yes.

24 Q. But you didn't communicate with Mrs. Goode
25 directly?

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1 A. I told you, sir, I have never spoken with
2 Mrs. Goode in my life.

3 Q. The information in the clinical summary, did
4 you assume those facts to be true?

5 A. Yes. And I had collateral information, as I
6 have already referred to by way of time lines, I also
7 had the police report. So the overall scenario is I
8 think pretty consistent from the different sources,
9 whether there's a difference in the specific isolated
10 fact or difference in a specific minute or so, that,
11 I cannot attest to; however, my recollection is that
12 I found nothing of any significant inconsistency
13 among the various chronological reports and summaries
14 as to the events that transpired.

15 I believe that what I did receive was
16 sufficient to portray a picture for me that was
17 sufficient to arrive at conclusions and opinions.

18 Q. In your December 5, 2016 report, you make a
19 statement on page 2 about the summary of Mr. Goode's
20 clinical history submitted by Mr. Tim Edwards.

21 A. What page was that?

22 Q. Page 2, sir, three paragraphs from the
23 bottom.

24 A. Yes.

25 Q. Do you have a copy of the clinical summary

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1 that Mr. Edwards submitted to you?

2 A. Do I have a copy?

3 Q. The statement in the report says, the
4 summary of Mr. Goode's clinical history submitted by
5 Mr. Tim Edwards, and then you go on to say what it
6 indicates. I'm looking for that document that you
7 reference in your letter.

8 A. Well, they would be probably more than one
9 document by that time. I had received copies of the
10 hospital record, I had received the police report.
11 So those are the things that I referred to submitted
12 by Mr. Edwards. Everything that I got from him is
13 here.

14 Q. What I'm trying to understand, doctor, is
15 if, besides the medical records, was there something,
16 some kind of summary?

17 A. Yes. Here's a summary right here.

18 Q. Page 2 of this document says at the top
19 summary of clinical history. Am I right, sir, right
20 here?

21 A. Yes. Here's another one, by the way.

22 Q. Are there any other summaries of the
23 clinical history you were provided besides these two
24 that you've given me?

25 A. Here's another one.

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1 Q. Are there additional ones in your files?

2 A. No. That appears to be everything. Wait,
3 here's another one. Something may be duplicative.

4 Then I got this statement of facts, looks
5 like a legal document. So those are the things that
6 I received.

7 Q. Are these the items to which you make
8 reference in your report when you refer to the
9 summary of the clinical history submitted by
10 Mr. Edwards?

11 A. Yes, collectively.

12 MR. PHILLIPS: Let's mark these collectively
13 as the next exhibit.

14 MR. UPCHURCH: Mr. Phillips, are there five
15 documents in that collective exhibit?

16 MR. PHILLIPS: Yes, there are five different
17 things stapled separately.

18 (Deposition Exhibit No. 4 was marked for
19 identification.)

20 BY MR. PHILLIPS:

21 Q. There's reference in your report I believe
22 to a videotape. Did you get any videotape of what
23 happened out on Goodman Road?

24 A. No.

25 Q. In the September 28, 2015 letter, next to

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1 the last paragraph on page 2 you cite as a source
2 attorney and video at scene. Do you see that?

3 A. Yes.

4 Q. Were you provided a video of what happened
5 at the scene?

6 A. No.

7 Q. And you've never reviewed one?

8 A. I have not seen a video, no.

9 Q. In your December 5, 2016 report, on page 4,
10 what's listed there at the top beginning with
11 abrasions, contusions, down through hemorrhage into
12 left there at the end, is that the summary of your
13 gross findings at autopsy?

14 A. Well, where is the autopsy report, do you
15 have it there?

16 Q. Yes, sir.

17 A. Yes, it appears to be identical listing.

18 Q. And then the following sentence that begins
19 29 H and E stain slides in your report, that is your
20 general summary of your analysis of the slides;
21 right?

22 A. Yes.

23 Q. Because you told us, Dr. Wecht, that there
24 was no indication of cause of death on your gross
25 findings and no indication of cause of death on the

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1 microscopic findings, does that mean that your
2 conclusion about cause of death is based on history?

3 A. Based on history, what we call a clinical
4 pathological correlation.

5 Q. Can you tell us when you received the
6 medical records that you reviewed in this case?

7 A. No, I do not have a covering -- wait, I'm
8 sorry. Here I have a note from Mr. Edwards dated
9 August 10, doctor, here are Troy's medical records
10 from his primary care physician.

11 That email is dated August 10, 2015. So I
12 guess I would have received it -- well, it's email,
13 so I received it that day.

14 Q. Did that transmittal include the records
15 from Baptist Hospital or just records from his
16 primary care physician?

17 A. This looks like only from the physician. It
18 does not appear to include the hospital record. The
19 hospital record came separately, and I cannot tell
20 you the time on that.

21 Q. I'm interested in trying to determine if we
22 can when you received the Baptist records from the
23 visit of July 18, 2015.

24 A. I cannot tell you when I received that. I
25 do not have a covering note on that.

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1 Q. Did you actually review the medical records
2 from Baptist or did you rely upon the clinical
3 summaries provided to you by Mr. Edwards and his
4 office?

5 A. I had records from Mr. Edwards, information
6 from Mr. Edwards. Here is an August 17, 2015 email
7 from Mr. Edwards referring to reports from the
8 Southaven Police Department. So I had those, because
9 there's a covering note on that.

10 The autopsy report from the original
11 pathologist. I cannot tell you specifically when I
12 received the Baptist OneCare Hospital record, whether
13 I had that or not. There is no covering note on
14 that, so I cannot tell you about the hospital record,
15 when I received it.

16 Q. Whenever you received those hospital
17 records, did you review them or did you rely upon the
18 summaries of those records provided to you by
19 Mr. Edwards and his office?

20 A. No, I reviewed them, I reviewed everything
21 that has been sent to me. Once again, just to make
22 it clear, if I found anything of an inconsistent
23 nature of any significance, I would certainly tell
24 you.

25 There are different things, references here

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1 or there, but for me as I have reviewed all these
2 records and as I have analyzed and interpreted them
3 for my purpose, I find nothing that is inconsistent.

4 Obviously, some things are more detailed
5 than others, but the scenario is the same, it doesn't
6 change from one report to another.

7 Q. Did you review any depositions taken in this
8 case, doctor?

9 A. No.

10 Q. You have been an editor for different
11 journals, haven't you?

12 A. Yes. A member of the editorial board or
13 board of editors, not the editor. I'm the editor on
14 some things, but mostly on the editorial boards.

15 Q. I was thinking about the section on page 29
16 of your CV that's labeled professional publications,
17 editorial positions.

18 A. Yes.

19 Q. And then you have a series listed there.

20 A. Yes.

21 Q. When you hold an editorial position in
22 connection with some journal or publication, what
23 responsibility do you have?

24 A. You're sent articles to review and then you
25 send back your analysis, whether it's accepted,

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1 whether it needs to be revised, any comments and
2 suggestions, that's what you do as a member of an
3 editorial board of a professional journal in my
4 fields of legal medicine and forensic science.

5 Q. Do you have any responsibility to ensure
6 that the publications in those journals are based
7 upon valid research?

8 A. I review what's sent to me. If you're
9 asking me do I go back and check every citation and
10 reference, no, I do not do that. I review the
11 article and submit my comments.

12 Q. When you review an article, do you determine
13 if the conclusions and statements in there are
14 scientifically sound in your field?

15 A. I usually make a comment or so on. The
16 kinds of comments, the extent of the comments will
17 vary from one paper review to another.

18 Q. What is the American Journal of Forensic
19 Medicine and Pathology?

20 A. It's the publication of the National
21 Association -- well, I don't know if it still is. It
22 used to be the publication of the National
23 Association of Medical Examiners. It may still be.
24 I know there's still an affiliation.

25 But it is a professional publication. It

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1 started off I know as the official publication of the
2 National Association of Medical Examiners. I think
3 it is now an independent journal with some
4 affiliation, but I think I have to pay separately for
5 that now, as I recall. I don't think it comes with
6 my dues.

7 Q. You have been on the editorial board for
8 that publication, haven't you?

9 A. Yes.

10 Q. Are you still? I think it was page 29 of
11 the CV where I saw that, doctor.

12 A. These are a list of articles by me.

13 Q. May I help you?

14 A. Here, I have the editorial list.

15 Q. Page 29 of that document.

16 A. Yes, right. What is the name of that?

17 Q. The American Journal of Forensic Medicine
18 and Pathology.

19 A. Yes. It says here 1979 to the present, so I
20 am still a member of that journal.

21 Q. Do you regularly meet with that board to
22 provide input or regularly review articles for them?

23 A. No, I do not meet with them. And I cannot
24 say that I regularly provide -- they come in quite
25 infrequently as I recall for that particular journal.

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1 I have several journals for which I review
2 articles. My recollection is for that one that I
3 don't get many articles to review.

4 Q. Do you read that journal yourself regularly?

5 A. I go through it when I receive it, yes.

6 Q. Do you refer to it occasionally in your work
7 and rely upon it?

8 A. I do not recall a specific reference, but I
9 incorporate and collocate information from various
10 journals as well as other informational sources. I
11 don't in some way delineate and separate these things
12 in my mind. They just all go into my brain and come
13 out whenever applicable.

14 I sometimes will refer to a specific
15 journal. I do not recall the last time I referred to
16 that journal specifically in any kind of a report.

17 Q. Is the American Journal of Forensic Medicine
18 and Pathology a reliable authority?

19 A. Well, all journals are reference sources.
20 It's difficult to answer your question about a
21 reliable authority. People differ. Of course you
22 see that in letters to the editor almost all the time
23 with people expressing different opinions. And then
24 sometimes years later an article that shows that
25 something is incorrect or needed to be changed

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1 significantly.

2 So I'm not waffling on this. I can't tell
3 you when you say authoritative; it's a respected
4 journal, a respected editor, a respected professional
5 organization and so on.

6 Is it authoritative? Articles express views
7 of the authors. Does that make it authoritative? It
8 is certainly, if it's been peer-reviewed, then it's a
9 respected article, but you may disagree with it.
10 That happens all the time in all kinds of
11 professional publications, including scientific ones,
12 let alone things in the realm of law and political
13 science and politics and other things which are much
14 more subjective.

15 But in my field of forensic science and my
16 field of legal medicine, there are differences of
17 opinion on things. And so, not to say that this
18 journal or this article says this and therefore that
19 is the authority; it doesn't work that way.

20 Q. So can there be disagreement among
21 reasonable pathologists about a cause of a particular
22 patient's death?

23 A. Yes.

24 Q. Is the American Journal of Forensic Medicine
25 and Pathology peer-reviewed -- are the articles in

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1 there peer-reviewed?

2 A. Yes, I believe they are.

3 Q. Is it a widely used journal?

4 A. Well, all the members in name get it, and I
5 can't tell you how many other people, I have no
6 knowledge of that. But if you are a -- well, it used
7 to be that you all get it, every member of name
8 received it. Now it's a fair amount of money. I
9 can't tell you. I still get it, I pay that extra
10 money. I can't tell you, but probably most by far of
11 named members I'm sure do subscribe to the journal,
12 but I can't tell you if it's 100 percent.

13 Q. Is it generally a trustworthy journal?

14 A. My answers would be the same as to
15 trustworthy, authoritative. I don't know what you
16 mean by trustworthy. You know, it's a series of
17 articles that have been reviewed by people, and they
18 set forth their opinions.

19 But it is not as if putting something down
20 in writing makes it a definitive, unassailable
21 nature.

22 I'll tell you very simply, like I always
23 say, forensic medicine, forensic pathology is not an
24 absolute science; it's not physics, mathematics or
25 chemistry or arguably astronomy. So there are

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1 differences of opinion, as I'm sure there will be in
2 this case. I'm here to express my opinion, sir, and
3 I'm prepared to do that.

4 Q. You wouldn't pay to receive a journal that
5 you thought was untrustworthy, would you?

6 A. I don't know what you mean by untrustworthy.
7 I don't use that word. You asked me before about
8 authoritative, that's usually a word that is more --
9 I pay to receive it to learn what people have to say
10 about various matters. Some of them are very
11 esoteric, things of an extremely rare nature.

12 It's just something that you do if you're
13 active in the field from my perspective to try to
14 keep abreast of things because you don't get new
15 textbooks every year.

16 Q. What is the Journal of Forensic Sciences?

17 A. That's the publication of the American
18 Academy of Forensic Sciences.

19 Q. Are you a member of that academy?

20 A. Yes.

21 Q. Have you served on the editorial board for
22 this publication?

23 A. Yes. Not now, not for some years, but I had
24 been on the editorial board of that publication.

25 Q. Is that a journal that you read regularly?

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1 A. I receive it and I read through it, yes.

2 Q. Is it widely used in your field?

3 A. Again, it goes to all the members of the
4 American Academy of Forensic Sciences, and that's the
5 largest forensic scientific group in the country I
6 believe. So the people in the various scientific
7 specialties and subspecialties get that.

8 The American Academy of Forensic Sciences is
9 comprised of about I think eight or nine sections now
10 and the different forensic scientific fields, so it's
11 a panoply, it's a potpourri of different forensic
12 scientific specialty areas.

13 Q. Is it a respected journal in your field?

14 A. Yes. My comments are the same. The
15 articles are peer-reviewed. And is it respected?
16 Yes, respected. Are there statements and conclusions
17 that one may differ with? Absolutely.

18 Q. Are there any sources, whether they be
19 journals or textbooks, in your field that you could
20 identify for me as being a reliable authority?

21 A. My answer would be the same for all of the
22 journals in my field, exactly what I have told you;
23 they're peer-reviewed articles, that means they have
24 some credibility, that have been reviewed by two or
25 more members of an editorial board, final review I

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1 guess coming from the editor-in-chief. So they're
2 not considered to be things of a superficial,
3 undocumented nature.

4 Some people rely more upon one journal than
5 another perhaps. I certainly can't speak for all of
6 my colleagues. There is no one journal that is -- I
7 was going to say like the Bible, a lot of people
8 don't accept the Bible either. So I can't say
9 anything more than I have about these journals.

10 Q. What sources would you go to if you needed a
11 reference work, what would be your?

12 A. I have a lot of textbooks on pathology and
13 forensic pathology going back from different people,
14 and I have various medical books and journal
15 articles, and sometimes in cases attorneys will send
16 me some things, too, that they may acquire.

17 And to a great extent I base things on my
18 experience now of 55 years in forensic pathology.
19 That plays a major role. Not as a matter of
20 egocentricity, but in my 55 years for me and my
21 20,000 autopsies that I have done and 40,000 others
22 that I have reviewed, supervised or signed off on
23 play a major role in leading me to conclusions and
24 opinions on a particular case, whether it's an
25 autopsy that I do or a consultation that I am

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1 reviewing.

2 Q. Is there a particular textbook to which you
3 would make reference if you needed to consult one?

4 A. No. It varies. There are some --

5 Q. Is there a particular journal that you would
6 reference if you needed to reference a journal?

7 A. No. The same answer I gave you. I will
8 grab different things, for example, there's some
9 books on neuropathology, there's some books on liver,
10 there are books that relate to specific organ
11 systems, and then you got other books in the realm of
12 clinical pathology, plus the journals you have
13 mentioned and many other journals.

14 Q. In your report of December 5, 2016 you did
15 not cite any specific medical literature, did you?

16 A. No.

17 Q. Does that mean that you do not intend to
18 cite or rely upon any specific medical literature in
19 this case for your opinions?

20 A. No, I would not say that. I may -- I'm sure
21 that I have read things and am relying upon them that
22 I am aware of, and I most likely did go back to one
23 or more books or articles as I was preparing this
24 report, I have no specific recollection, if I felt
25 that some statement I was making -- well, in this

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1 case I would say for example that, yes, in my report
2 where I refer to a specific number I think at the end
3 of my report about quantities -- let me see that.

4 Q. Are you looking for your December 5 letter?

5 A. Yes, my report.

6 MR. McINTOSH: I want to state for the
7 record that I am exiting the deposition.

8 A. Here on page 4, it gives some specific
9 numbers, I'm sure I got that from an article or a
10 book somewhere. If I give a specific number like
11 that, I referred to the specific quantities of LSD.
12 I would not have known, I doubt that I would have had
13 that in my mind, but let's say I get a case next week
14 or next month, I have a fairly good memory, I may
15 remember the number so the next time it may be coming
16 from my mind. In this case I believe that I would
17 have gotten those numbers from some article. I don't
18 believe I would have had those numbers in my mind.

19 Q. Is there any particular medical literature
20 or article that you can tell us you consulted with
21 regard to the LSD opinions on page 4 that you're
22 referencing?

23 A. I know there are articles on LSD, and I
24 think I definitely read one or two articles. I
25 cannot give you the authors' names. Several people

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1 have written about LSD.

2 And of course something else, too, that I
3 referred to for numbers, I received a copy of a
4 report submitted to Mr. Edwards from a recognized
5 expert in the field of LSD, Dr. David E. Nichols,
6 Ph.D., N-i-c-h-o-l-s. He gives specific numbers and
7 he gives specific references to published papers. So
8 I had the benefit of that also in referring to LSD.

9 Q. Did you rely upon Dr. Nichols' report to
10 form your opinions?

11 A. No. My opinions were the same insofar as
12 whether or not LSD caused the death. I did not need
13 or rely upon Dr. Nichols' report. I am a forensic
14 pathologist, and he is not. I found his report very
15 illuminating and very erudite, but I did not need his
16 report, I did not rely upon his report to arrive at
17 the conclusion that I did vis-a-vis the arguable role
18 of LSD in leading to Mr. Goode's death.

19 Q. What is the date of his report, the copy
20 that you have?

21 A. January 11, 2016.

22 Q. I may not have understood your answer to
23 this question, so forgive me if I'm repeating myself,
24 you have not cited in your report a specific article
25 or piece of literature; correct?

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1 A. Yes.

2 Q. Do you intend in this case in conjunction
3 with any opinion you give to cite a specific journal
4 article or textbook?

5 A. No. If I were testifying today I would give
6 the answers that I've already given you, so I would
7 not have a specific name. It may be that Mr. Edwards
8 will want me to refer to a specific article based
9 upon the opinions I've given, the quantitative
10 numbers I have expressed and so on, in which case I
11 would do so.

12 But let's say I were testifying today, my
13 answers would be, as I have given you, that I have no
14 specific article I'm referring to, but I have
15 acknowledged that I did acquire specific quantitative
16 numbers relative to LSD toxicity as referred to in my
17 report.

18 Q. You didn't in the section on positional
19 asphyxia make any reference to the literature even
20 generally, did you?

21 A. No.

22 Q. Has Mr. Edwards or anybody else provided you
23 any articles for you to review in conjunction with
24 this case?

25 A. No, not that I recall.

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1 Q. Have you published anything yourself
2 pertaining to positional asphyxia?

3 A. I don't recall. I know I've dealt with this
4 and commented on it hundreds and hundreds of times.
5 I think I probably have. I would have to go through
6 -- one just caught my eye right here now,
7 Investigation and Analysis of Police-Related Deaths,
8 No. 56 in my CV at the Arnold Markle Symposium, Henry
9 C. Lee Forensic Science, University of New Haven.

10 Q. Was that a lecture or publication?

11 A. That's a publication based upon a lecture.

12 Q. Is there a citation given there for that?

13 A. Yes. Published in the proceedings of that.
14 I think that any article here which talks about
15 police-related deaths, there's another one I gave at
16 the American College of Forensic Examiners, I
17 remember that one, in Branson, Missouri, that it
18 would definitely have included reference to that.

19 I know that there are others. And I have
20 written about this in my textbook, in my own book, so
21 I know that I've written about this because I've been
22 involved in these cases.

23 Q. Let me try to ask a better question.

24 I'm not asking about lectures that you may
25 have given. I'm asking about publications that would

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1 appear in peer-reviewed journals. Have you submitted
2 any publications to peer-reviewed journals on the
3 topic of positional asphyxia?

4 A. I do not know offhand if I've had any
5 submitted to a peer-reviewed journal. I have had
6 many published in association with lectures given at
7 various meetings. They would not have been
8 peer-reviewed.

9 Q. Have you conducted any research or testing
10 regarding positional asphyxia?

11 A. No.

12 Q. Have you submitted any publication to a
13 peer-reviewed journal regarding LSD?

14 A. No.

15 Q. Excited delirium?

16 A. No. Well, no, I do not believe so, no.

17 Q. What is the name of your textbook that you
18 make reference to?

19 A. Forensic Pathology in Civil and Criminal
20 Cases.

21 Q. And you would not acknowledge your own
22 textbook as a reliability authority, would you?

23 A. No, people will disagree with me, some
24 people. So my answer for my own book is the same as
25 I have expressed with regard to other people's books

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1 and articles. These are my opinions. Much of it is
2 hard science which would not differ from one book to
3 another, but there are variations. And then there
4 are areas then which are more subjective.

5 Q. Are you familiar with a book called the
6 Handbook of Forensic Pathology by Vincent DiMaio?

7 A. I'm familiar with a book by Dr. Vincent
8 DiMaio. I didn't recall it as a handbook. I thought
9 it's a bigger book. So I don't know that I have a
10 handbook. I know Dr. DiMaio has a couple of books or
11 more. So I'm familiar with the books that he has
12 published, that he has written, yes.

13 Q. Do you refer to Dr. DiMaio's books on
14 occasion?

15 A. I probably do. I think I have one of his
16 books. And as I say, I'll just grab a book.
17 Sometimes I'll look something up in two or three
18 books.

19 Q. Have you, in fact, cited Dr. DiMaio's book
20 in testimony in other cases?

21 A. I do not know. It is certainly possible
22 that I've done so, but I can't remember specifically.
23 I can't tell you.

24 Q. Is Dr. DiMaio a respected expert in your
25 field?

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1 A. Yes.

2 Q. Are you familiar with Forensic Pathology, a
3 text whose primary author is Dr. David Dolinak?

4 A. David?

5 Q. Dolinak.

6 A. Dolinak?

7 Q. Yes, sir.

8 A. No, that one I do not know at all, neither
9 the name of the book nor the author, Dolinak, no.

10 Q. What is the Journal of Legal and Forensic
11 Medicine?

12 A. Which one is that, of Legal and Forensic
13 Medicine? I'm trying to remember which organization
14 publishes that. I know the name, but I'm confused as
15 to -- can you tell me, I don't know which
16 organization -- I'm familiar with that name, I just
17 don't know which professional organization publishes
18 that.

19 Q. Is that a journal to which you make
20 reference?

21 A. Again, I think it's a journal that I
22 receive. And my answer would be the same as I have
23 expressed regarding other journals.

24 Q. So you think it's one that you receive and
25 regularly review?

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1 A. I believe that it sounds like one of the
2 journals that I receive.

3 MR. UPCHURCH: Mr. Phillips, I need a brief
4 break when you come to a good stopping point.

5 MR. PHILLIPS: I should have told the doctor
6 that when we started, should you need a break, I will
7 be happy to give you one. Mr. Upchurch has baled us
8 all out, so we'll take a break now.

9 (Whereupon, a short recess was taken off the
10 record.)

11 BY MR. PHILLIPS:

12 Q. Would you locate the toxicology report from
13 Mississippi, please?

14 MR. EDWARDS: You say the toxicology report,
15 there are actually two from Mississippi. Which one?

16 MR. PHILLIPS: Just get them both.

17 THE WITNESS: Yes, I have that report.

18 BY MR. PHILLIPS:

19 Q. I'm looking specifically for page 3 of 5 on
20 the tox report for Mississippi, there's a reference
21 comment No. 5. Do you see that?

22 A. Yes, page 3 of 5, yes.

23 Q. Reference comment No. 5?

24 A. Yes.

25 Q. Would you read that, please?

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1 A. "LSD (lysergic acid diethylamide) subclavian
2 blood. LSD is a U.S. DEA Schedule I substance with
3 no medical use. It is generally classified as a
4 hallucinogen or psychedelic drug and may produce
5 illusion, both auditory and visual. Physiological
6 effects are primarily sympathomimetic, and may
7 include madrasas, hyperthermia, seizures, panic and
8 paranoid reactions.

9 Flashback reactions are not uncommon in the
10 experienced user. Effects may develop in as little
11 as 15 minutes and generally last no more than eight
12 hours but in rare cases may proceed or exceed 12
13 hours.

14 Blood concentrations of LSD between 4 and 6
15 ng/mL are usually seen one to two hours after the
16 usual psychedelic dose; however, levels as high as 16
17 ng/mL have been reported.

18 Death due to the pharmacological effects of
19 LSD is rare, with most of this occurring as a result
20 of LSD-induced suicide and accidental trauma."

21 Q. Do you agree with what you just read?

22 A. Yes.

23 Q. You've made reference in your report to the
24 fact that Troy Goode took LSD on July 18, 2015;
25 correct?

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1 A. Yes.

2 Q. What impact did LSD have on Troy Goode?

3 A. It caused him to be become hallucinogenic.
4 He was clearly hallucinating and suffering from the
5 effects of LSD. I think it's referred to
6 colloquially as a bad trip.

7 Q. The erratic behavior that is described in
8 your report, is that the result of LSD?

9 A. Yes.

10 Q. The reference in your report to his feeling
11 claustrophobic and getting out of the car twice,
12 pacing in circles saying I don't know what to do, I
13 don't know what to do, is that all attributable to
14 his LSD ingestion?

15 A. Yes.

16 Q. Does marijuana in any way potentiate the
17 effects of LSD?

18 A. Not to my knowledge. Marijuana is
19 pharmacologically characterized as a mild
20 hallucinogen. I'm not aware of any references to any
21 kind of synergistic effect. I have not encountered
22 it myself in any of my cases.

23 It's an interesting question because, as
24 I've already said, marijuana has a mild
25 hallucinogenic effect. It is theoretically possible

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1 that it could contribute a little bit, I just don't
2 know of any study. I can't answer that in a
3 definitive way.

4 Q. Does marijuana produce a hallucinogenic
5 effect?

6 A. Well, I told you it's a mild hallucinogenic.
7 I'm not aware, from what I know and hear and read
8 about marijuana that it produces anything like what
9 was manifested by Mr. Goode, not at all. I've never
10 heard of anything like that among marijuana users.

11 Q. In your report with reference to Mr. Goode's
12 condition in the emergency room you say that he
13 appeared to be extremely agitative and combative. Is
14 that related to his LSD ingestion?

15 A. I think it is, along with an extremely
16 uncomfortable physical position of being hogtied over
17 a prolonged period of time, of some difficulty in
18 breathing easily. Primarily I think the effects are
19 due to LSD, but I think definitely enhanced and
20 aggravated by those physical circumstances.

21 Q. You state in your report in the ER he was
22 screaming uncontrollably and disrupting the entire
23 department. Is that, too, related to LSD ingestion?

24 A. My answer would be the same, primarily due
25 to LSD but also due to the hogtied position, which

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1 makes it difficult to breathe, to the overall
2 physical situation in which he found himself.

3 But basically and primarily due to LSD with
4 those aggravating enhancing factors.

5 Q. You state further he appeared floridly
6 psychotic. Is that, too, from his narcotic
7 ingestion?

8 A. Yes. I think those things which could be
9 considered psychotic are primarily due to LSD.

10 Q. He stated "I don't know how to explode". Is
11 that something you also attribute to his LSD
12 ingestion?

13 A. Well, it's a statement that he made as
14 reported to me. I think, again, my answer is the
15 same. It's all part of his reaction to LSD. It's
16 part of the overall hallucinatory state in which he
17 found himself.

18 Q. Were you aware that he had used LSD on at
19 least two prior occasions, one in 2008 and one in
20 2013?

21 A. No, I don't think I know anything about past
22 experience.

23 Q. Would that make any difference to any
24 conclusion you reach in the case?

25 A. No. There's nothing of a lingering nature

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1 at all; once it's over with LSD it's over. So no,
2 that would be of no relevance to me.

3 Q. Can LSD ingestion cause excited delirium?

4 A. I have to start by telling you that I do not
5 accept excited delirium as a scientific diagnosis, so
6 therefore I can't answer that question.

7 But the second part of the answer is that if
8 you take the effects of LSD producing these kinds of
9 hallucinogenic delusional thoughts, expressions and
10 physical actions, then they can lead to a state of
11 great excitement.

12 I'm not aware, I'm trying to think of the
13 people who do believe in such a diagnosis, whether
14 they -- I can't speak for them because they related
15 cocaine and stimulants. I can't answer that question
16 for the reasons I've given.

17 Q. What, does acronym NAME stand for?

18 A. National Association of Medical Examiners.

19 Q. Doesn't that organization except excited
20 delirium?

21 A. I believe they do.

22 Q. Are you a member of that organization?

23 A. Yes.

24 Q. Isn't excited delirium accepted and
25 discussed?

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1 A. Yes, by many people, and rejected by others.

2 Q. So it is accepted in the forensic pathology
3 literature generally, isn't it?

4 A. I can't tell you generally. I'm telling you
5 that I'm aware that it has been accepted by some
6 groups and by many individuals and by some people who
7 have written books on it, and others do not accept
8 it, it's been rejected with some very strong
9 derogatory statements by various people, Canadian
10 Medical Association, Royal Canadian Police, I think
11 some of the European groups and so on.

12 But I am very much aware that it has been
13 accepted by NAME and by other people who are
14 experienced, competent forensic pathologists.

15 Q. Does the forensic pathology literature
16 recognize that LSD ingestion can cause excited
17 delirium?

18 A. That's exactly the question you asked me
19 before. I gave my answer. And I'm not sure if the
20 people who believe in excited delirium have related
21 this to LSD. I don't know. I'm not telling you no.
22 I'm telling you I don't know.

23 The cases that I've dealt with in which
24 excited delirium has been proposed, expounded, they
25 have related almost always to people who have had

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1 cocaine or amphetamine or the central nervous system
2 stimulants. I just can't think offhand whether they
3 have related it to hallucinogenic compounds. I'm not
4 saying they haven't, but I don't remember.

5 All the references that I have encountered
6 have been to cocaine, amphetamines, MDMA, Xstasy,
7 those kinds of drugs. But it may well be that others
8 have related it to LSD, I just don't know.

9 Q. Can LSD ingestion cause a cardiac
10 arrhythmia?

11 A. Well, yes, we see it in this case, it
12 produced supraventricular tachycardia, which is an
13 arrhythmia. That's the kind of arrhythmia I think
14 that has been referred to by people writing about
15 LSD.

16 Q. Can LSD injection produce a cardiac
17 arrhythmia that can lead to death?

18 A. No, because, to get to the heart of the
19 matter, the reports show somewhere I've seen from 9
20 to 11 percent of Americans have ingested LSD one or
21 more times.

22 Using the higher number, some people have
23 estimated as many as 31 million Americans have used
24 LSD, and there are just no deaths, a couple have been
25 reported, it's quite arguable in the literature

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1 whether they were scientifically shown to have been
2 attributed.

3 That's why I said a handful or so, not to
4 quibble, one or two or three or four, literally a
5 handful; and many authors have said none, others say
6 maybe the one case or so on.

7 I have never seen LSD listed in any of the
8 autopsy reports, about 40,000, rough estimate, that I
9 have seen death certificates and/or autopsy reports
10 nor have I ever listed it myself, and I've already
11 told you what is set forth in the literature.

12 So the answer, therefore, to your question
13 of a fatal cardiac arrhythmia is no, because that
14 indeed would be the mechanism of death were it to
15 occur as a result of LSD from cardiac arrhythmia.
16 And I just have not experienced that.

17 Q. Can LSD indirectly lead to death?

18 A. Indirectly, cases of people committing
19 suicide or being killed accidentally under the
20 influence of LSD, I can understand that, and I'm
21 aware of some reported cases.

22 In fact, gee, I remember a long time ago the
23 U.S. government had somebody they were experimenting
24 on who jumped out of a building or so on in New York
25 City. So the answer indirectly, yes.

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1 Q. In your report of December 5, 2016 you list
2 a couple of questions that you answer. The first is
3 on page 4 and the second is on the top of page 5.
4 Did somebody suggest these questions to you?

5 A. No. These are questions that I pose to
6 myself and respond based on what I think is the
7 essence of the matter as it relates to me.

8 Q. So nobody raised with you concern about LSD
9 use before you prepared your report?

10 A. Oh, I'm sure the question had been raised in
11 the discussion with Mr. Edwards. It was no secret.
12 I didn't come up with something that hadn't been
13 thought of.

14 But the answer to your question is, I mean,
15 obviously it was a question on Mr. Edwards' mind.
16 But did he state that question in that form to me?
17 No. These are my words.

18 Obviously, I knew that Mr. Edwards would
19 like to know and would need to know what my thoughts
20 were in terms of LSD and Mr. Goode's death.

21 Q. Was it also made clear to you that he was
22 interested in your opinion about whether positional
23 asphyxia played a role?

24 A. Yes, sure. We had talked about that. By
25 that time I had the information about the hogtied

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1 position.

2 So once again, my answer is exactly the
3 same, the question is in my words, the objective and
4 the purpose of the question and the answer thereto is
5 something that I obviously recognized to be the
6 essence of the case, of course.

7 Q. You made reference earlier to some
8 difficulty breathing that Mr. Goode had?

9 A. Yes.

10 Q. Can you point me to anything in the medical
11 record at Baptist Hospital that would indicate he was
12 having difficulty breathing?

13 A. Well, yes, the respiratory rate as I recall
14 rose, the blood pressure dropped -- I mean, the blood
15 pressure first it rose and then it dropped. The
16 respiratory rate raised. And the oxygen level
17 dropped to about 90 percent.

18 So that is a clear manifestation of some
19 respiratory difficulty. 90 percent is not
20 acceptable. Healthy, normal guy, I'm sure Mr. Goode
21 walking around before all of this happened he would
22 have had a much higher oxygen level. So that is the
23 most specific diagnostic reflection of respiratory
24 compromise.

25 Q. Did you see any assessment done by anybody

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1 in the emergency department who actually saw
2 Mr. Goode where they indicated he was having trouble
3 breathing?

4 A. I don't recall a specific statement by --
5 they did not assess under pulmonary, chest, "too
6 combative to assess fully". And pulmonary/chest,
7 there's no comment there at all.

8 The respiratory rate was 24. The oxygen
9 level is 90 percent, which I have already referred
10 to. So do I see a statement about respiratory
11 difficulty? No, they did not listen with a
12 stethoscope, they did not do an auscultation test,
13 they said that they were unable to do that.

14 Q. But wouldn't a trained health care
15 professional observing a patient be able to discern
16 difficulty breathing without putting a stethoscope on
17 the chest?

18 MR. EDWARDS: Object to the form.

19 THE WITNESS: The answer is yes, but a
20 trained health care professional person would do a
21 lot of other things, too, like somebody is in your
22 hospital and he's in a hogtied position and you're
23 seeing these laboratory changes is to remove him from
24 the hogtied position.

25 I'm not trying to be sarcastic or clever

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1 here. What I'm saying is in answer to your question,
2 what would trained hospital personnel do, again,
3 trained hospital personnel, you don't see a lot of
4 the injuries that were found by the pathologist in
5 Mississippi and by me that are reflected in the
6 hospital record.

7 So I'm not here to make comments on any
8 aspect of the case that might deal with medical
9 malpractice, but I'm pointing out when you ask me in
10 this case about observations and comments by health
11 care professionals, that's part of my answer, the
12 record speaks for itself, what they saw and what they
13 stated and what they did not comment upon or observe.
14 So I don't know what to tell you.

15 BY MR. PHILLIPS:

16 Q. Are you not in this case offering any
17 opinions on the standard of care, are you?

18 A. No, I am not.

19 Q. And your practice doesn't include seeing
20 living patients, does it?

21 A. No.

22 Q. And it doesn't include assessing living
23 patients, does it?

24 A. It doesn't include what?

25 Q. Assessing living patients.

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1 A. Assessing, no.

2 Q. Did you mention in your report of December
3 5, 2016 the important things that you saw in the
4 medical records?

5 A. No, I do not believe. Let me see. No, the
6 only comment of a tangential nature is on page 3, in
7 that 8:49 to 9:22 block where I state Troy was in a
8 hospital room with police, still in a hogtied
9 position, and I give the source from the police
10 incident report. Then I say police, not medical
11 personnel, advised medical personnel that Troy was no
12 longer breathing.

13 So that's the only reference that I see to
14 anything in my report about the hospital. As I've
15 said, in answer to your question today and I'm sure
16 in my mind at that time I was not approaching this as
17 I would do in a report dealing with medical
18 malpractice.

19 One thing, sir, I just noticed on that page
20 3 also up above, I do say that triage reflected
21 oxygen saturation of 90 percent and respiration of
22 24, so that is a reference to the hospital record.

23 Q. You noted that Mr. Goode was said to be
24 screaming and yelling while in the emergency
25 department; right?

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1 A. Yes.

2 Q. Isn't that some indication of ability to
3 breathe and ventilate?

4 A. No. If I understand your question, as a
5 matter of fact the opposite might be true. When
6 you're having difficulty in breathing, that is one of
7 the most -- well, that is the most fundamental
8 voluntary/involuntary physiological phenomenon, the
9 need to breathe; the panic that ensues when you are
10 having a compromise of oxygen.

11 And so then the yelling, the exhortations
12 are likely to be greater than, for example, if you're
13 having an experience with some pain or some other
14 kind of distress.

15 The inability to breathe is the most
16 frightening, horrific situation that a human being
17 finds himself in, that an animal finds itself in, but
18 we'll talk about human beings.

19 So in that situation it is well known in
20 these cases of the combativeness, of the yelling and
21 the screaming, it's just a terrible situation in
22 which you are not able to breathe properly.

23 Q. But you have to have air in your lungs to be
24 able to yell and scream, don't you, doctor?

25 A. Absolutely, but at no --

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1 Q. To do that repeatedly indicates you're able
2 to fill your lungs with oxygen, yell and scream, fill
3 your lungs with oxygen, yell and scream; right?

4 A. I would accept the statement except when you
5 say fill. To take in some oxygen and to breathe and
6 be able to verbalize, my answer is yes. But that
7 doesn't mean that you're filling, that you're
8 removing the CO2 and taking in oxygen in the normal
9 fashion. It just means, sure, and I at no time ever
10 have I thought or commented or believe that his mouth
11 and nose were closed and that he was unable to do any
12 breathing.

13 It's a matter of the compromised nature of
14 the normal respiratory physiological function, not a
15 matter of physical or mechanical asphyxiation
16 blocking the airway.

17 Q. Did you see in the medical record any
18 reference to any abnormal color in this patient
19 before he coded?

20 A. No, I do not recall any reference to any
21 kind of discoloration.

22 Q. Is it your conclusion that Mr. Goode died of
23 a cardiac event?

24 A. Yes. It's my conclusion that he died as a
25 result -- everybody dies when the heart stops

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1 beating. I believe that he died as a result of
2 cardiorespiratory failure.

3 I believe that he died as a result of
4 compromise of normal breathing process as a result of
5 his prolonged hogtied position anywhere from an hour
6 and 20 to an hour and 30 minutes as I calculate the
7 numbers, a portion of which also included even I
8 think five circular straps over his body, too, in the
9 EMS vehicle.

10 So I believe that that would be the final
11 cause of death, cardiorespiratory failure brought
12 about by respiratory compromise, then we see evidence
13 of cardiac effect with the supraventricular
14 tachycardia noted a couple of times and then
15 reflected on a portion of ECG strip, although I don't
16 read ECG strips, but just taking their interpretation
17 of what I understand there's a limited ECG reading.

18 So that's the answer to your question, that
19 to me is the cause of death here. This was an
20 otherwise healthy individual with no problems other
21 than a chronic asthmatic condition, which I
22 understand was reported, I've been told that
23 Mrs. Goode did mention that to the police, that her
24 husband had asthma, although as you have asked me, I
25 cannot myself state that as an anatomical diagnosis

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1 based upon my autopsy.

2 But otherwise, this is a healthy man. And
3 I've given you my thoughts on LSD and on excited
4 delirium based upon my experience dealing with these
5 kinds of matters of positional asphyxiation, this is
6 my opinion which I express with a reasonable degree
7 of medical forensic scientific certainty.

8 Q. You don't interpret EKGs, do you?

9 A. I prefer the English, ECG.

10 Q. Sorry.

11 A. That's okay. No, I've already said that,
12 no, I don't interpret them. I already volunteered
13 that. I just refer to the interpretation by somebody
14 who read that.

15 Q. Mr. Goode's death is also consistent with
16 excited delirium leading to a cardiac arrhythmia,
17 isn't it?

18 A. No, it is not. So again, I'll preface my
19 response by saying that I don't accept excited
20 delirium as a scientifically documented diagnosis.
21 But let's take it hypothetically.

22 No, number one, you do not have something
23 that is found in these cases of hyperthermia; number
24 two, most, not 100 percent, but almost all of these
25 cases involve people who have been -- who have taken

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1 a central nervous system stimulant, cocaine most
2 frequently, amphetamine, methamphetamine, MDMA, Xstasy
3 and so on, sometimes with high levels of alcohol. We
4 don't have that.

5 And then also the cases that I've dealt
6 with, they have been cases in which somebody placed
7 in the -- somebody who dies as a result of what
8 others accept as excited delirium, and these have
9 always interestingly been police-related deaths in my
10 experience somehow, it doesn't seem to happen with
11 other people, only when they have an altercation with
12 a policeman, that they die then and there. They
13 don't die an hour and a half later.

14 So for those reasons, just dealing
15 hypothetically, again, that if this were to be
16 considered as excited delirium, my response is as
17 I've given it, no hyperthermia, no precipitating
18 pharmacological agent, and the delayed death, I do
19 not believe this would meet the criteria of excited
20 delirium for those who believe in excited delirium.

21 Q. Do you see any symptoms that Mr. Goode had
22 that are consistent with excited delirium?

23 A. Yes, for those who believe in excited
24 delirium; combativeness, excitation, screaming,
25 yelling, yes, those are things that are reported in

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1 such cases.

2 Q. Have you ever concluded that any person's
3 death was related to excited delirium?

4 A. No, because I do not believe in that
5 diagnosis.

6 Q. There was no weight on Mr. Goode's back
7 while he was in the emergency department, was there?

8 A. No, none that I saw reported.

9 Q. And in the emergency department he was not
10 strapped down; right?

11 A. He was not.

12 Q. Can one have positional asphyxia by being
13 restrained in some manner other than prone maximal
14 restraint?

15 A. Prone maximal restraint. Yes, not all cases
16 involve a total hogtied position. Some have a
17 partial binding, not necessarily complete, wrist to
18 wrist or ankle to ankle. And also in many -- some,
19 many, I don't know the percentage breakdown, but in
20 many cases, probably -- well, in many of the cases,
21 too, you have additional involvement of one or more
22 people pressing down on the victim's back, neck,
23 back, you have that as an additional component in
24 many such cases.

25 Q. That doesn't exist here?

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1 A. Not to my knowledge.

2 Q. Have you ever evaluated a case where there
3 was a concern about positional asphyxia and concluded
4 that the patient did not die of positional asphyxia?

5 A. I don't know. The answer is, I can't give
6 you a specific case. I may have, but I cannot refer
7 to a specific case.

8 Q. How long does it normally take for a patient
9 to asphyxiate?

10 A. Oh, that will vary greatly. The answer is,
11 total cessation for whatever reason of oxygen, we're
12 talking about four to six minutes of oxygen reservoir
13 in the brain, you may wind up with some damage, but
14 that's usually the figures that people give.

15 It can vary. Some people in frigid
16 conditions, even in ice water, can last longer.
17 Forget the people who train for this, pearl divers,
18 some of them are absolutely incredible.

19 But the average person, you know, we talk
20 about four to six minutes. Now, that's total, total
21 blockage in whatever fashion, you're smothered by a
22 landslide, I had some of those cases not a couple
23 weeks or so ago, young man just working with his
24 father in a ditch and everything just came down upon
25 him.

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1 So if you have partial compromise, it will
2 take longer. Well, look at a carbon monoxide case
3 for example, it may take a long time before you die,
4 before you reach a level in which the oxygen supply
5 is just inadequate for your body's needs.

6 So it varies. There's all kinds of
7 situations. You have to deal with each one based
8 upon the circumstances of that case.

9 Q. We talked earlier about the American Journal
10 of Forensic Pathology of which you have served on the
11 editorial board. I want to ask you about a
12 particular article which appeared in Volume 19,
13 September 1998, on pages 201 through 205.

14 The title of the article is Reexamination of
15 Custody Restraint Position in Positional Asphyxia.
16 Let me pass you a copy here so you can look at what
17 I'm talking about.

18 Look at the last sentence of the first
19 paragraph under the abstract on page 1. Do you see
20 that?

21 A. Yes.

22 Q. Would you read that last sentence, please?

23 A. "We conclude that the hogtied restraint
24 position by itself does not cause respiratory
25 compromise to the point of asphyxiation and that

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1 other factors are responsible for the sudden death of
2 individuals placed in this position."

3 Q. Do you agree with that statement?

4 A. No.

5 Q. Is that statement inconsistent with the
6 opinion you've reached in this case?

7 A. Yes, except for the last part, by the way.
8 The last part is actually consistent when they see
9 sudden deaths. Now, of course they don't give a
10 temporal definition or parameters, but that's an
11 interesting comment and consistent with what I said a
12 little while ago about excited delirium, the
13 suddenness of such a case.

14 But taking the overall statement otherwise,
15 yes, I disagree. And this gets to what we talked
16 about an hour or two ago, whenever, about journals
17 and articles. I definitely disagree with this
18 statement.

19 Q. Your position is that the maximum restraint
20 position causes respiratory compromise; right?

21 A. Yes, indeed.

22 Q. And that's what this study expressly
23 rejected; right?

24 A. That's correct. They disagree, and
25 evidently their findings and statements have not been

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1 accepted either by the overwhelming majority of
2 federal, state and local police agencies in the
3 United States of America that specifically instruct
4 their police officers not to place somebody in a
5 hogtied position and certainly not to keep them in
6 that position for any period of time.

7 So evidently this has not been accepted by a
8 lot of other people, too, besides me.

9 MR. EDWARDS: Was this a study funded by the
10 San Diego Police Department?

11 BY MR. PHILLIPS:

12 Q. Is this a study that is peer-reviewed,
13 doctor?

14 A. I would imagine. I would believe that the
15 article published in this journal had been
16 peer-reviewed, yes.

17 Q. What does that mean if it's been
18 peer-reviewed?

19 A. It means that two or more, but usually two,
20 members of the editorial board -- well, not
21 necessarily limited to the editorial board, but two
22 other people, either on the editorial board or people
23 in the same field of medicine or whatever, have
24 looked at the article and expressed their opinions.

25 Q. Look at page 7, the conclusions section.

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1 A. Yes.

2 Q. Read the last sentence, please.

3 A. "Although restraints in general, in general,
4 increase the psychological and physiologic stress on
5 the individual, no evidence suggests that body
6 position alone causes hypoventilation, respiratory
7 compromise, or positional asphyxia in the hogtied
8 custody restraint position."

9 Q. Do you agree with that statement?

10 A. Absolutely not. I myself have had cases in
11 which, very famous case around here, Johnny Gamut,
12 33-year-old guy, cases of healthy people with no
13 disease at all, and I mean, no, I absolutely do not
14 agree with this statement and this -- well, I won't
15 repeat myself about all the other people and
16 organizations and groups, including law enforcement
17 with very specific guidelines and instructions that
18 have been in place for years.

19 In fact, it's now 2017, these guidelines,
20 these instructions, most of them have now been
21 adopted for now about a decade, it varies greatly.
22 But this is not something that is brand new on the
23 table.

24 Q. This is a conclusion published by a well
25 recognized journal in your field that's

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1 peer-reviewed, based upon research that's been done?

2 A. Yes, that's what the authors state.

3 Q. So this is a position that reasonable
4 forensic pathologists can take; right, based upon
5 this research?

6 A. I can't speak for anybody else. I've
7 already answered you that I am well aware that many
8 of my colleagues accept the phenomenon of excited
9 delirium. I recognize that and --

10 Q. This has nothing to do with excited
11 delirium. This has --

12 A. In a hogtied position.

13 Q. -- to do with that restrain causes
14 respiratory compromise?

15 A. I'm sorry. That, I can't comment on. I'm
16 sorry, I was jumping to excited delirium.

17 I don't know, when you say my colleagues,
18 may I see that again? I can't speak for all forensic
19 pathologists. I cannot answer your question. I
20 think most forensic pathologists do believe that a
21 hogtied position could lead to death. That is my
22 belief. Can I cite you a source? Have I conducted a
23 survey? No, I have not.

24 But I think that most of my forensic
25 pathologists nowadays if they're confronted and given

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1 the information about a prolonged hogtied position
2 that they would accept it. But I can't give you an
3 article to refer to.

4 Q. This is a conclusion published in a
5 peer-reviewed forensic pathology journal?

6 A. Yes. I do not recognize -- you'll see these
7 are emergency room physicians. So they're speaking
8 for themselves. My only comment is these are not by
9 forensic pathologists. These are by emergency room
10 physicians. Big difference.

11 Q. Given the fact that it's published in a
12 forensic pathology journal indicates that peer
13 reviewers reviewed it, thought it valid and accurate
14 and worthy of publication; true?

15 A. Well --

16 Q. Is that true?

17 A. Well --

18 Q. Can you answer my question before you
19 explain?

20 A. I'm going to answer. I'm going to give you
21 the answer. You read something, and as a reviewer,
22 validity based upon what they represented doesn't
23 mean that you yourself believe that, but you believe
24 it is something that has been validly analyzed by the
25 authors and that it has a right, so to speak, of

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1 being published.

2 I'm not equivocating on this. I'm just
3 saying that you don't reject an article as an
4 editorial board or other reviewer because you
5 disagree with the conclusions. You review it to see
6 does it have sufficient scholarliness, is it
7 sufficiently and properly -- and the answer is yes,
8 they did review it and whoever it was and they
9 concluded that it was worthy of publication. That's
10 what it connotes.

11 And then as you are aware, in the legal
12 journals, let alone the lay public, that's where
13 letters to the editor come in from people who
14 disagree.

15 MR. PHILLIPS: Let's mark this article as
16 the next exhibit.

17 (Deposition Exhibit No. 5 was marked for
18 identification.)

19 BY MR. PHILLIPS:

20 Q. I want to show you an article from the
21 Journal of Forensic Scientists 2007, Volume 2, No. 1.
22 This is, again, a journal for which you have served
23 as an editor or on the editorial board; correct?

24 A. Yes. I don't believe I was an editor, but
25 on the editorial board, yes.

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1 Q. This is an article entitled Ventilatory and
2 Metabolic Demands During Aggressive Physical
3 Restraint in Healthy Adults; right?

4 A. Yes.

5 Q. The last sentence in the second paragraph on
6 the left says what?

7 A. "However, a recent study reported that,
8 although PMRP alone -- where am I? Sorry. I lost my
9 place. Let me start again.

10 "However, a recent study reported that,
11 although PMRP by itself resulted in a small,
12 restrictive ventilatory pattern compared with seated
13 measurements, there is no evidence of
14 hypoventilation, hypercapnia or hypoxemia."

15 Q. Do you agree with that statement?

16 A. No.

17 Q. PMRP is defined early in the article as
18 prone maximal restraint position?

19 A. Yes.

20 Q. And that's the position that Troy Goode was
21 in?

22 A. Yes.

23 Q. So this article says, it's referring to a
24 recent study that shows no evidence of
25 hypoventilation, hypercapnia or hypoxemia; right?

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1 A. That's correct, with healthy adults in an
2 investigative setting, yes, that's correct. Not
3 exactly what you have in a setting involving police
4 and nor does it address the question of time, such as
5 we have in this case.

6 In fact, they talk about sudden death. If
7 you look on page 173 under discussion, the first
8 sentence again, although sudden death has occurred in
9 individuals placed in the PMRP, on and on and on.

10 So once again we have the reference to the
11 temporal component of so-called -- well, to these
12 kinds of deaths. We see the use of the word sudden,
13 even back on page 171 the right-hand side, the second
14 sentence I see cases of sudden death of restrained
15 individuals often involve those who continue to
16 struggle after being restrained.

17 Q. Let me direct you back to page 173. You
18 started to read a sentence but you didn't complete
19 it. Let's complete it. It's on the right-hand
20 column under discussion, "although sudden death has
21 occurred in individuals placed in PMRP, the cause of
22 death and whether body position was a factor remain
23 controversial".

24 That's what the complete sentence says'
25 right?

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1 A. Yes.

2 Q. Do you agree with that, that that is a
3 controversial topic?

4 A. Do I agree that it's controversial? Yes, I
5 would have to agree that it's controversial, yes.

6 Q. And on page 171 at the bottom there's a
7 reference to a copyright by the American Academy of
8 Forensic Scientists. Do you see that?

9 A. Yes.

10 Q. Is that the organization that publishes the
11 Journal of Forensic Science?

12 A. Yes.

13 Q. Are you a member of that organization?

14 A. Yes.

15 Q. And have served on its editorial board?

16 A. Yes.

17 Q. Page 173 in the right-hand column, "prior
18 studies in healthy subjects have found no evidence of
19 significant hypoventilation when subjects were placed
20 in PMRP".

21 Did I read at that correctly?

22 A. Yes.

23 Q. Do you agree with that statement?

24 A. Well, do I agree? I don't believe that
25 they're telling a lie. I believe that their study --

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1 do I believe that it is a comparable situation? No.
2 But I'm not suggesting that they made this up.

3 Q. You agree that there have been prior studies
4 showing what they reference?

5 A. Well, yes. In fact, you just showed me a
6 prior study some minutes ago. Yes, I agree that
7 there have been such studies.

8 Q. And then it continues on 173, "our results
9 in this study appear to support these findings".
10 Right?

11 A. Yes.

12 Q. So this is yet another study consistent with
13 prior studies that show no evidence of significant
14 hypoventilation when subjects are in prone maximum
15 restraint position; correct?

16 A. Yes, that is correct. What seems to be
17 absent here, and I haven't had a chance to read the
18 article, what seems to be absent here is the
19 alternative explanation for the death.

20 I don't see anything talking about
21 myocardial infarction, atherosclerosis of the
22 coronary arteries, cerebral vascular accident,
23 cerebral hemorrhage. I don't see anything like that.
24 So they don't tell me how these people died.

25 Q. Look on page 175, the concluding sentence,

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1 if you would, please. Actually the next to the last
2 concluding sentence, left-hand column.

3 A. Yes.

4 Q. "Based on these observations in healthy
5 subjects, we conclude that PMRP in prone positioning
6 with moderate weight force on the back do not in and
7 of themselves restrict metabolic or ventilatory
8 demands to any clinically important degree. As such,
9 factors other than isolated ventilatory failure
10 should be considered when evaluating deaths occurring
11 in the setting of restraint in the field."

12 Did I read that correctly?

13 A. Yes, you read it correctly and --

14 Q. Do you agree?

15 A. No. My answer is the same as before. This
16 is interesting that these authors don't tell us what
17 the other things are that should be considered. I
18 would love to know then what causes the death of a
19 26- or a 33-year-old person in good health with no,
20 no, pathological processes found at autopsy at all.

21 I would love to know then, tell me, what did
22 they die from? Tell me, what did they die from? Was
23 it a visitation from God? What did they die from?

24 And I have not seen that in this article, I
25 have not seen it anywhere in all of these cases of

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1 excited delirium or the negated reports of people who
2 have died while in a hogtied position.

3 They never tell me, gee, what caused the
4 death. You die from something. And you usually die
5 from cardiac arrhythmia when it happens like that of
6 a sudden nature. That's the only thing that can
7 cause sudden death. Forget about cyanide or
8 strychnine or some poison like that.

9 The only thing that causes death is
10 something that causes your heart to beat irregularly
11 and then you set into motion a whole chain of events
12 in which the brain is deprived of oxygen and then the
13 brain controlling the lungs and heart doesn't do its
14 job and the cycle worsens and that's it very fast, as
15 quickly as it takes me to explain it.

16 But that's how you die. And there's no
17 other way that you die. That's how you die. And
18 tell me, tell me, gentlemen, tell me what did these
19 people die from.

20 Q. May I have the article, please. It will be
21 Exhibit No. 6.

22 (Deposition Exhibit No. 6 was marked for
23 identification.)

24 BY MR. PHILLIPS:

25 Q. I'll show you an article now, doctor, from

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1 the Journal of Forensic and Legal Medicine published
2 in 2013. The title of this article is The Effect of
3 the Prone Maximal Restraint Position With and Without
4 Weight Force on Cardiac Output and Other Hemodynamic
5 Measures; correct?

6 A. Yes.

7 Q. This is yet another publication in the
8 literature in the field of forensic pathology; right?

9 A. Yes. Again, submitted by emergency room
10 physicians.

11 Q. But peer-reviewed, all of these articles
12 that we've looked at are peer-reviewed, aren't they?

13 A. Yes, I believe so.

14 Q. And accepted for publication in forensic
15 pathology journals?

16 A. Yes.

17 Q. Look on page 993.

18 A. Okay.

19 Q. Right-hand column, first full paragraph,
20 "Previously, it had been postulated that the hogtie,
21 hobble or the PMR-O position placed individuals at
22 risk for asphyxiation from ventilatory compromise
23 from so-called positional asphyxia. However, studies
24 investigating the position have found that while PMR,
25 and even just the prone position itself, results in a

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1 small restrictive pattern on pulmonary function
2 testing, there are no studies indicating that the
3 position leads to hypoventilation or hypoxia, and
4 multiple studies indicating that there is no effect
5 upon oxygenation."

6 Did I read it correctly?

7 A. Yes.

8 Q. Do you agree with that statement?

9 A. No. I accept the statement from the authors
10 and referring to studies. Do I believe in what the
11 statement sets forth? No.

12 Q. Yes, sir. That's a fair distinction. Let
13 me refine my question a bit.

14 You do not dispute that there have been
15 multiple studies indicating that there's no effect of
16 the prone maximal restraint position upon
17 oxygenation, you don't dispute that statement?

18 A. Right, I don't know the number, but no, I
19 don't dispute it. You've already shown several of
20 these today.

21 Q. And those findings of those multiple studies
22 that we just referenced there in those two sentences,
23 that's contrary to your opinion in this case; right?

24 A. Yes, that's right.

25 Q. This would be contrary to the basis of the

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1 opinion you hold in this case, wouldn't it?

2 A. Well, yes, except that I must point out to
3 have some volunteers engage in an experimental
4 situation, to be conducted right here in this room
5 right now is an awful lot different from the
6 psychological emotional state that we have with
7 Mr. Goode and in other cases in which I, myself, have
8 done autopsies where it was clear that the person
9 died as a result of having been placed in that
10 position.

11 Q. Look at page 994, please, in the right
12 column. It's the paragraph just above -- it's on the
13 right.

14 A. Wait a minute.

15 Q. 994.

16 A. I have it.

17 Q. It's the paragraph beginning "in summary".

18 A. Yes, I see it.

19 Q. It says, "In summary, our findings do not
20 support the contention that PMR with or without
21 weight force of up to 100 pounds results in a
22 decrement in CO, carbon dioxide, sufficient to cause
23 an inherent risk of cardiovascular collapse".

24 Is that what it says?

25 A. Yes, that's what it says. By the way, they

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1 have it CO, they probably mean CO -- anyway, just let
2 it be, I'm not going to correct them editorially, but
3 something's wrong. Anyway, I understand what they're
4 saying. Yeah, go ahead.

5 Q. The last sentence of that paragraph --
6 actually, the next sentence says, "These findings are
7 consistent with field case reports in which similar
8 sudden deaths occurred in non-prone and non-PMR
9 positions".

10 Did I read that correctly?

11 A. Wait a minute. I kind of lost you. One
12 second. Yes, that's right.

13 Q. Next sentence, "These findings are also
14 consistent with a recent large prospective
15 epidemiological study of police use of force in which
16 prone position was not found to be associated with
17 sudden death".

18 Did I read that correctly?

19 A. Yes.

20 Q. And you don't dispute that there was a large
21 prospective epidemiologic study making that finding,
22 do you?

23 A. No, if they cite it, I'm not aware of it,
24 but they give you the reference. I accept the
25 correctness.

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1 Q. Then the last sentence of that particular
2 paragraph, "as such, it appears another cause of
3 cardiovascular collapse is more likely in these types
4 than decreased CO secondary to prone position with
5 weight force".

6 Did I read that correctly?

7 A. Yes.

8 Q. Conclusions at the bottom of the page,
9 "Cardiac output is not significantly affected by the
10 PMR compared with the prone or supine positions, with
11 without application of 50 to 100 pounds of weight
12 force to the back".

13 Did I read that correctly?

14 A. That's correct.

15 Q. You don't dispute that that's the conclusion
16 and finding of this research that's published in this
17 particular forensic journal, do you?

18 A. That's right. Once again I'm looking for
19 the explanation for the people who died. They don't
20 tell that.

21 The other thing is, you can do this with me
22 at my age right now, the oldest person in the room,
23 lying down on the ground and put 100 pounds of
24 weight, let the young lady, our stenographer, she
25 doesn't weigh much more than that, sit on my back,

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1 and I assure you I will not have a problem breathing.

2 It's a hell of a lot different than four or
3 five cops around there that have me in the hogtied
4 position. I can just imagine the language and the
5 situation between the victim and the police. A
6 little bit different.

7 That's the problem with all of these
8 studies. Let's have a controlled study, Joe, you lie
9 on the ground, Susan, lie on the ground, and we put
10 some weight on you and so on. Boy, that is
11 different, day and night.

12 MR. PHILLIPS: We'll mark this article as
13 the next exhibit.

14 (Deposition Exhibit No. 7 was marked for
15 identification.)

16 BY MR. PHILLIPS:

17 Q. We made reference earlier to Dr. Vincent
18 DiMaio and his book on forensic pathology. Do you
19 recognize this as the cover page from that book?

20 A. No. See, I don't have this book because I
21 see a co-author Suzanna Dana. No, I don't have this
22 book. I think I have a textbook by Dr. DiMaio, but
23 this one I do not have.

24 Q. On page 169, I'm sorry, I don't have an
25 extra copy of this, letter D says, "research by Chan,

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1 et al. determined that the original experiments were
2 in error. He found that while placing an individual
3 face down in the hogtied position following strenuous
4 exercise, e.g. a struggle, did produce restrictive
5 pulmonary functioning as measured by pulmonary
6 function test. These results were not clinically
7 relevant. There was no evidence of hypoxia".

8 Is that what letter D says.

9 A. Yes, I'm sure you read it. Yes, that's what
10 it says.

11 Q. Do you agree with Dr. DiMaio's conclusion
12 there?

13 A. Well, again, I'm accepting that he is
14 quoting the article by Chan, et al. correctly. Do I
15 agree with the findings? No, I do not.

16 Q. Then letter E on page 169 says, "Subsequent
17 testing in which weights were applied to the thorax
18 also did not produce clinically relevant decreases in
19 pulmonary functioning. Thus, there is no proof that
20 ordinary force placed on an individual by kneeling on
21 them or lying across their body compromises
22 respiration".

23 Did I read that correctly?

24 A. Yes, I'm sure you did. My comment is the
25 same. Again, my other comments are also the same;

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1 what causes the death and how come all of the
2 recognizable police agencies in the country,
3 including the International Association of Police
4 Chiefs, have issued orders not to place somebody in a
5 hogtied position?

6 MR. PHILLIPS: We'll mark the DiMaio
7 excerpts as the next exhibit.

8 (Deposition Exhibit No. 8 was marked for
9 identification.)

10 BY MR. PHILLIPS:

11 Q. Would you agree, doctor, that there is a
12 significant body of medical literature that disagrees
13 with the conclusions that you've reached in this
14 case?

15 MR. EDWARDS: Objection; asked and answered.

16 THE WITNESS: Yes.

17 BY MR. PHILLIPS:

18 Q. When you undertook your analysis of this
19 case, did you make any survey of the scientific
20 literature to see what the research, testing and
21 publications had shown regarding whether positional
22 asphyxia causes the problems that you attribute to
23 it?

24 A. I did not conduct a specific extensive
25 research because I was then, as I am today, familiar

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1 with these positions, not every one of the papers
2 that you have presented to me, but I've been long
3 aware of such findings. So I was well aware of that.
4 I did not have to conduct any research to know that
5 there are people who have other opinions.

6 Q. What current positions or jobs do you hold?

7 A. Well, I'm an independent person. I am a
8 forensic pathologist. I do autopsies for district
9 attorneys and coroners in four surrounding counties
10 here in southwestern Pennsylvania, but I'm an
11 independent contractor, I'm not on their payroll. I
12 get paid for the work that I do.

13 I get a small, they give it nominally to the
14 adjunct professors at the Duquesne University School
15 of Law, to cover parking, I don't know, \$2,200,
16 \$2,500. I think that's the only payment that I
17 receive from anybody.

18 All the other work involves payment that I
19 receive from coroners, district attorneys, private
20 families for whom I do autopsies, like I did
21 yesterday and will be doing again this afternoon, and
22 for my consultations with attorneys in all kinds of
23 cases, civil and criminal. So that's where my income
24 comes from.

25 Q. Do you currently hold any position with any

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1 medical school?

2 A. Yes. I'm an adjunct professor of pathology,
3 University of Pittsburgh School of Medicine, and I'm
4 -- no, sorry. Clinical professor of pathology,
5 University of Pittsburgh School of Medicine; adjunct
6 professor of epidemiology, Graduate School of Public
7 Health, University of Pittsburgh.

8 Then I have several other faculty positions,
9 but those are the ones that relate to -- well, no,
10 there's another one at Carlow University, I'm a
11 distinguished professor of pathology. I don't know
12 if you said medical schools. That's not a medical
13 school, it's a university, Carlow, distinguished
14 professor of pathology at Carlow University.

15 I have three faculty appointments at
16 Duquesne University, but they're not in pathology;
17 they're law, health sciences and pharmacology
18 toxicology.

19 Q. We walked through these various articles
20 earlier in the case. My question to you at this
21 point is as follows: Can you cite to me any
22 published peer-reviewed article that supports your
23 position and conclusion in this case?

24 A. I have no articles that I could cite to you
25 at this time. I believe there are, if Mr. Edwards

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1 were to find it necessary, I would look for those.
2 As we sit here today I cannot cite you an article,
3 but I know that there are such articles and such
4 statements.

5 In fact, that of course is the very
6 foundation that is the predicate upon which law
7 enforcement agencies all over the country, at the
8 federal, state and local levels, have adopted the
9 policies that they have.

10 Q. You read with me through the articles that
11 we addressed that there was at one time some
12 consideration that the prone maximal restraint
13 position led to the problems that you described, but
14 subsequent testing and research disproved that
15 theory. You read that with me, didn't you?

16 A. I read what the authors say, and I disagree
17 with that. Here again, if that were to be true, how
18 come there has not been any retraction, any recision,
19 indeed any modification whatsoever of all of the
20 promulgated guidelines to which I have referred
21 several times here today? It evidently has not
22 reached those levels of law enforcement.

23 Q. Is there a difference between a medical
24 examiner and a coroner?

25 A. Well, the difference is in most places the

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1 coroner -- by definition the coroner as traditionally
2 acknowledged doesn't have to be a forensic
3 pathologist. Medical examiners by definition in this
4 country are to be forensic pathologists. So those
5 are the differences.

6 Most coroner systems involve election, and I
7 think all medical examiner positions involve
8 appointments by some governmental agency.

9 Q. Do you currently hold the position of
10 coroner anywhere?

11 A. No.

12 Q. When have you last held such a position?

13 A. January '06.

14 Q. What is the last coroner position that you
15 held?

16 A. That's the last coroner position. I am the
17 forensic pathologist for these four coroners, I have
18 been for a couple of other coroners, too. But at the
19 present time for these four coroners, I am their sole
20 forensic pathologist.

21 Q. But the last coroner position you held would
22 have been for Allegheny County?

23 A. Yes.

24 Q. How did it come to be that you stopped being
25 the coroner of Allegheny County?

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1 A. They adopted a medical examiner system by
2 election in November of '05. And then I was
3 appointed the medical examiner and resigned that
4 month, in January of '06.

5 Q. Why did you resign?

6 A. If you want to get into on the record,
7 you're going to pay for the next two hours. You open
8 up that door, that's fine. I love to talk about it.
9 I love to talk about it. But you're not going to
10 open up the door and close it. I'm going to make
11 this very clear that I know you cannot talk about
12 this. If you want to talk about, we're going to do
13 it, sir. I'm going to go into great detail.

14 I resigned because the federal government
15 indicted me for 84 felony counts. And I'm going to
16 go through every single point, okay, in which finally
17 the 3rd Circuit Court of Appeals, three Republicans,
18 said that the judge who handled the case had to be
19 removed because he was biased. And it was turned
20 over to another federal judge who ripped the U.S.
21 Attorney's office apart, and all the charges were
22 dropped completely in June of 2009.

23 Do you want to walk with me on the streets
24 of Pittsburgh and see what the people of Pittsburgh
25 think about me? Do you want to go down that road,

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1 sir, fine, we're going to go down that road
2 politically.

3 I know and you know that you cannot bring
4 this up in a court of law. I think it is despicable
5 for you to open up this door. I thought you would
6 behave like a gentleman. You have shown me that in
7 truth you are not. You're like so many other defense
8 attorneys, anything goes, anything goes at all.

9 It doesn't go here. You're in my territory.
10 You're in my room. So you want to come up with this
11 stuff, fine, we're going to deal with it. We'll go
12 through whatever you want. We'll talk about the U.S.
13 attorney who is so disagreed that she left Pittsburgh
14 and it took her four years to get a job. We're going
15 to talk about it all. Do you want to talk about,
16 let's talk about. Don't play games with me.

17 Q. Did you ever practice as a lawyer?

18 A. Once I was in a court co-counsel, once I
19 took a deposition, and once I took a case pro bono
20 from the federal court to plead somebody guilty.

21 I was a member of a law firm, Wecht Law
22 Firm, as a listed member, of counsel. Practicing are
23 the three things that I have mentioned, and I think
24 I've done a few little things for people as friends,
25 maybe writing a will or so on. But no, I haven't

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1 practiced as a lawyer. I just have not had the time.
2 I have kept up my legal license and have it to this
3 day.

4 Q. Have you ever represented either party to a
5 civil case as the lawyer yourself?

6 A. No.

7 Q. How about in a criminal case?

8 A. No.

9 Q. Your CV reflects that you are a member of
10 the Association of Trial Lawyers of America; is that
11 right?

12 A. I have been. It's been a long time, I think
13 it's 10, 15, 20 years since I was a member, but I had
14 been a member for many years.

15 Q. Do you know that to be an organization
16 comprised of plaintiff's attorneys?

17 A. Yes.

18 Q. And you also were a member of the Medical
19 Malpractice Committee of the American Association of
20 Trial Lawyers of America?

21 A. I don't remember. If I was, I was. That is
22 a committee, I don't recall ever being in the
23 committee meetings. But if it's so listed, I was.

24 Q. It is, it's listed on your CV.

25 Were you a member of the Pennsylvania Trial

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1 Lawyers Association?

2 A. Yes.

3 Q. Is that an organization comprised of
4 predominantly plaintiff's lawyers?

5 A. Yes. And I haven't been a member of that
6 either -- I guess I dropped out of all of those about
7 the same time. It should be reflected in my CV. I
8 set it forth in the CV that I was a member of those
9 organizations, but I know I'm safe in saying ten
10 years, I'm pretty certain it would be 15 to 20 years.

11 Q. You're aware, aren't you, doctor, that there
12 are professional associations for defense attorneys,
13 civil defense attorneys?

14 A. Yes. And I was a member of the American
15 Association of Hospital Attorneys, too, which is a
16 defense organization, as I recall, for some years and
17 haven't been a member of that organization for a long
18 time. But yes, I know that there are defense
19 organizations.

20 Q. Have you been to any seminars put on by the
21 American Association of Trial Lawyers as it pertains
22 to expert witnesses and how to be an expert witness?

23 A. Yes, I was. Back then in those years with
24 ATLA, yes, I did attend and speak at several ATLA
25 meetings way back in the '70s and '80s, maybe into

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1 the '90s. Yes, I did speak at several of those.

2 Q. Have you ever attended any other seminars or
3 programs on how to be an expert witness in a medical
4 case?

5 A. I haven't attended. Well, I've spoken at
6 several meetings. I don't know what the exact titles
7 were, and I've written about being an expert witness
8 and what to expect several times. Again, they're all
9 listed in my CV.

10 Q. Have you ever been convicted of any crime?

11 A. No.

12 Q. Have you ever pled guilty to any crime?

13 A. No.

14 Q. Have you ever had any adverse action taken
15 on your medical license?

16 A. No.

17 Q. Have you ever had a complaint filed against
18 you by any medical board, any licensing board?

19 A. No, not to my knowledge.

20 Q. Have you ever been fired from any position
21 of employment you've held?

22 A. I already referred to the fact that I was
23 asked to resign in January of 2006 from that position
24 of medical examiner.

25 Q. Is that the only occasion?

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1 A. Yes.

2 Q. You don't have privileges at any hospital to
3 treat patients, do you?

4 A. No. I'm not a treating physician. And my
5 hospital -- the hospital where I was chairman of the
6 department of pathology closed 1999, 2000. I have
7 not had a hospital affiliation since that time.

8 Q. There are folks who do clinical pathology
9 work, reviewing specimens on living patients and
10 patients in hospitals?

11 A. Yes. And I did that through my five-year
12 residency and then from 1962 to the year 2000, for
13 those 38 years I did it at several hospitals. And
14 I'm board certified in clinical pathology as well as
15 anatomic and forensic pathology.

16 Q. As I understood your testimony, that part of
17 your practice ended in the year 2000 sometime?

18 A. Yes. The hospital closed, the parent
19 hospital closed so they closed the St. Francis
20 Central Hospital, that's correct, in the year 2000.

21 Q. Have you ever had a civil suit filed against
22 you?

23 A. I think there was one once, and then I was
24 dropped out. It really involved my colleague, but I
25 was named initially, and I don't know whatever

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1 happened, but I was dropped out of it. I was never
2 deposed or anything. But I do recall one time that I
3 was named at the beginning of a lawsuit.

4 Q. Do you think that's the only time you've
5 been sued in a civil case?

6 A. Yes, when I was the chairman of the
7 department of pathology, and the action was against
8 the hospital and my colleague and they named me.
9 That's the only case involving the medical field.

10 Q. What was it alleged that you did wrong in
11 the civil case?

12 A. That I was chairman and therefore respondeat
13 superior. My colleague was charged with having made
14 a wrong diagnosis, and I was named also.

15 Q. Even though you personally didn't evaluate
16 the specimen or make the report?

17 A. That's correct. My name was not on the
18 report.

19 Q. Do you have a copy of your current fee
20 schedule there in front of you, doctor?

21 A. Yes. It's right there.

22 Q. May I have this copy?

23 A. Yes. I brought extras.

24 Q. This is the fee schedule governing this
25 particular case?

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1 A. Yes.

2 MR. PHILLIPS: We'll mark it as the next
3 exhibit.

4 (Deposition Exhibit No. 9 was marked for
5 identification.)

6 BY MR. PHILLIPS:

7 Q. Do you have with you today the invoices
8 showing the charges you made for your work in this
9 particular case?

10 A. Yes.

11 Q. These invoices when taken together will show
12 all of the fees that you've been paid up through the
13 beginning time of the deposition today?

14 A. Yes.

15 Q. I see in here the check from my firm for the
16 \$3,500 payment for today's deposition. You got that;
17 right?

18 A. Yes.

19 MR. PHILLIPS: We'll mark the invoices as
20 collective Exhibit No. 10.

21 (Deposition Exhibit No. 10 was marked for
22 identification.)

23 BY MR. PHILLIPS:

24 Q. Your fee schedule indicates that there can
25 be supplemental fees in given cases?

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1 A. Yes.

2 Q. Did that apply to this particular case?

3 A. No. The only payment was the original
4 submission fee and then the payment for the meeting
5 and the work with Mr. Edwards relative to the
6 deposition.

7 Q. Is it your practice to require prepayment of
8 fees?

9 A. Yes.

10 Q. For all stages of the case?

11 A. Well, yes, although not quite. I require
12 submission or many times -- most of the time, always
13 I guess -- well, I shouldn't say always, almost
14 always with defense attorneys. I know that they
15 don't have the payment, it's coming from their
16 insurance company clients, and so I don't get the
17 payment upon submission there. But there's the
18 acknowledgement that they will pay. And then I
19 require payment for depositions in advance.

20 Where I do not require payment in advance is
21 in those cases that you referred to where I sometimes
22 get supplemental materials of a substantial nature,
23 lengthy depositions, investigative reports and so on,
24 I do not charge an advance because I'm into the case
25 and I get these things and I let it go. So anyway,

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1 that's what happens, but otherwise I do request
2 payment in advance with everybody else pretty much.

3 Once in a while a governmental agency, yeah,
4 governmental agencies, I don't get paid in advance
5 when I testified, district attorneys and all my
6 homicide cases, I don't get paid in advance. Those
7 are all bills that are submitted afterwards.

8 Q. Do you require attorneys who retain you to
9 sign contracts?

10 A. No. I do, when an attorney tells me that
11 they can't pay, their client is going to pay or
12 something, I do ask them to send me a letter to that
13 effect. And where attorneys are appointed by the
14 court or public defenders, I do ask them to send me a
15 copy of the court order or the court's approval for
16 payment of the fee. I do request that.

17 Q. I didn't see in your materials any of the
18 defense expert disclosures in this case. Have you
19 been provided with those?

20 A. No, I have not been.

21 Q. Do you know Dr. Greg Davis?

22 A. I know that he's a forensic pathologist. I
23 don't know him personally.

24 Q. Do you know that he is a forensic
25 pathologist at the University of Kentucky?

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1 A. Yes, I think that's where I thought he is,
2 yes.

3 Q. Is he a well respected forensic pathologist?

4 A. As far as I know he is a respected board
5 certified forensic pathologist. I have not had any
6 dealings with him, any cases, but I accept him as a
7 board certified respected forensic pathologist.

8 Q. Do you know Dr. Gary Vilke, V-i-l-k-e?

9 A. No, I do not know him at all. I know
10 nothing about him, where he is or anything.

11 Q. Did you notice he was one of the authors on
12 some of the articles?

13 A. Yes, I remember that name.

14 Q. You didn't know he was one of the experts
15 for the defense in this case?

16 A. No. I don't know who the experts for the
17 defense are.

18 Q. Give me your best estimate of how many times
19 you have been consulted as an expert witness in a
20 legal case, whether it be criminal or civil.

21 A. I would say, starting off in the early
22 years, I would say I get about probably on average
23 maybe three to four cases a month civil and criminal,
24 some workers' comp. That's pretty much been the
25 average. Yeah, I would say around there.

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1 I would tend to say about 36 to 50 in the
2 course of a year combined. That does not include the
3 cases that I do autopsies in where the district
4 attorney subsequently calls me to testify. There are
5 maybe a dozen of those a year. So that's the answer.

6 Q. Times how many years of doing this?

7 A. Well, I started in the fall of 1962 when I
8 came back to Pittsburgh after finishing all my
9 training. But gee, I don't know, a case or two and
10 then a couple of cases a year, then a few cases more.
11 So probably it wasn't until maybe half a dozen years
12 later that I could talk about the kind of average
13 number that I gave you. But for the first several
14 years I had nowhere near that number.

15 Q. So if you were estimating for us the total
16 number of times you've been consulted as an expert?

17 A. Consulted?

18 Q. Yes, in a case of litigation, what would
19 that number be?

20 A. Consulted? Well, then if we go, let me say
21 '67 to '17, because that's easy numbers. 33 and 17
22 is 50. 50 times 35 is 1,750. Then probably it comes
23 out to be a couple thousand cases, throw in the
24 earlier years. So probably then rough numbers maybe
25 2,000 to 3,000 since 1962.

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1 Q. How many times would you estimate you've
2 given depositions in cases where you've been retained
3 as an expert?

4 A. Only about an average maybe of three or four
5 a year. So that would be, again, probably about 250
6 to 300 depositions.

7 Q. How many times have you testified at trial
8 approximately?

9 A. Well, I testify roughly about a dozen times
10 a year for the district attorneys on the homicides
11 that I do. Aside from that, testimony, maybe on
12 average just now, two or three times a year. The
13 overwhelming majority of cases insofar as my
14 involvement is concerned do not wind up with me
15 testifying.

16 Q. Give me your best estimate of the number of
17 times you've testified at trial total?

18 A. At trial?

19 Q. Total, for all the years.

20 A. For all the years, again, excluding the
21 homicide cases for district attorneys that are
22 follow-ups to autopsies that I've done, how many
23 times have I testified? There again, I don't know,
24 250 to 350, something like that. I don't know.

25 Q. In the civil cases in which you've been

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1 consulted as an expert, can you help us understand
2 what portion of those have been at the request of the
3 plaintiff and what portion has been at the request of
4 the defense?

5 A. What percentage of what, consultations?

6 Q. Yes, sir, in civil cases.

7 A. Well, that has varied. I would say for the
8 first -- I would say up into the -- roughly, this is
9 nothing fixed, but roughly probably through the 1980s
10 it was about 85 percent plaintiff.

11 The 1990s to the present time it's been
12 60-65 plaintiff and about 35-40 defense in civil
13 cases consultant.

14 Q. Give me the same approximation with regard
15 to the depositions you've given in civil cases, what
16 percent for plaintiff, what percent for defense?

17 A. They would play out the same way. As I've
18 said, there aren't that many depositions. So in the
19 years up through into the 1990s, nine out of ten
20 probably would have been for plaintiff.

21 1990s to the present time, probably when I
22 have a deposition, it's probably about seven out of
23 ten were for plaintiff and about three out of ten for
24 defense. Something like that.

25 Q. How about trial, same question?

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1 A. The same. I thought I gave you that. Oh,
2 you want trial testimony. Again, gee, I just don't
3 testify that much. Very little in civil cases. Very
4 little. It's hard to give a percentage. So few
5 cases.

6 I'm trying to remember the last time I
7 testified in court in a civil case, and I can't
8 remember when that was. Again, it would be into the
9 1990s when I did testify in court, probably about
10 eight times out of ten would have been for the
11 plaintiff and a couple times for the defense, as best
12 as I can recollect.

13 I never thought about it. So few cases in
14 which I testify civilly that it's hard for me to come
15 up with a percentage.

16 Q. Before this case, have you ever been
17 involved in a case at the request of Mr. Tim Edwards
18 or his law firm before?

19 A. I don't recall Mr. Edwards at all. I do
20 recall the name Ballin. I think I had a case with
21 Mr. Ballin, but I'm just not sure, but I think did.
22 I don't remember what it was or whenever. The name
23 is familiar.

24 Q. Do you know how many cases you had for
25 Mr. Ballin?

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1 A. I think only one, as far as I believe, only
2 one. I don't know what it was.

3 Q. Have you ever been excluded as an expert
4 witness by any court?

5 A. No, not to my knowledge.

6 Q. Have you ever been prohibited from giving
7 any particular opinion in a given case, even though
8 you may have been permitted to testify about other
9 things? You look confused. Do you need me to
10 rephrase?

11 A. Yes.

12 Q. You understand this as a lawyer, a judge
13 could rule that a witness cannot testify at all, and
14 you've told me that has not happened; correct?

15 A. Yes.

16 Q. And then a judge could rule that a witness
17 may testify but may not express some of the opinions
18 he wishes to give. I'm asking you now if the latter
19 has happened to you?

20 A. Oh, I don't know. There's always objections
21 by attorneys. I don't remember a judge's response.
22 I'm sure sometimes objections are sustained, of
23 course. Not anything as a matter of judicial law
24 unprecipitated by a lawyer's objection as a judicial
25 ruling of a preparatory nature. I'm not aware

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1 anything like that. No.

2 MR. PHILLIPS: I want to mark the deposition
3 notice as the next exhibit.

4 (Deposition Exhibit No. 11 was marked for
5 identification.)

6 MR. GASS: Can I have a question read back.

7 (Requested portion of testimony was read
8 back by reporter.)

9 BY MR. PHILLIPS:

10 Q. Doctor, in the deposition notice we asked
11 you to bring certain things with you today. Have you
12 made an attempt to comply with bringing all of your
13 materials related to this case with you?

14 A. Yes.

15 Q. Are there any materials you have related to
16 this case that are not in the room with us today?

17 A. No.

18 Q. Let's identify clearly for the record the
19 materials that you have reviewed in this case. I
20 think we may have covered some of them in the course
21 of our conversation. We've got the summaries
22 provided to you by Mr. Edwards; right?

23 A. Yes.

24 Q. We've got the medical records that came at
25 some point from Baptist Hospital?

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1 A. Yes.

2 Q. And what other documents have you reviewed?

3 A. Other medical records of Mr. Goode from his
4 primary care physician having nothing to do with this
5 case, I received those records, too.

6 Q. Did those impact your opinions at all?

7 A. No. They just confirmed that he had asthma,
8 but otherwise had nothing to do really with my
9 opinion, other than as it may relate to the asthmatic
10 condition and as I'm aware of it. But as I've
11 already said, I only know of this from the records
12 and from Mr. Edwards, not from my autopsy findings.

13 Q. Are those the records from the primary care
14 physician?

15 A. Yes.

16 MR. PHILLIPS: Let's mark those as the next
17 exhibit.

18 (Deposition Exhibit No. 12 was marked for
19 identification.)

20 BY MR. PHILLIPS:

21 Q. Ultimately, did you review the autopsy
22 report from Mississippi?

23 A. Yes.

24 Q. And the tox reports from Mississippi?

25 A. Yes.

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1 Q. And the tox reports that you requested be
2 done?

3 A. Yes.

4 Q. Is there anything else you reviewed other
5 than what we just listed here together?

6 A. Well, there's, yeah, I had two expert
7 reports; one from, that's been referred to today,
8 from Dr. David Nichols.

9 Q. And the date on that, please?

10 A. January 11, 2016.

11 Q. Yes, sir.

12 A. And then I have a report from a cardiology
13 expert retained by Mr. Edwards, from Dr. Parim,
14 P-a-r-i-m, Parikh, P-a-r-i-k-h, dated January 31,
15 2017, a report to Mr. Edwards from Dr. Parikh.

16 Q. Does that have any bearings on your
17 opinions?

18 A. Well, yes, it does. It's consistent with
19 and corroborative of from a clinician, from a
20 cardiologist. So I've arrived at my opinions
21 independently, however, so you ask did it have any
22 effect, just the effect that, speak for myself, that
23 I would always have when someone that I do not know
24 and especially in a different area of medicine sets
25 forth an opinion that is very consistent with mine;

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1 so in that sense it has. But my opinion had already
2 been submitted, as you can tell, because I did not
3 get Dr. Parikh's report until February of this year.
4 It was not submitted to Mr. Edwards until January 31
5 of this year.

6 Q. Is there anything else you reviewed?

7 A. Yeah. There's a statement here from an
8 attorney representing the hospital that I had
9 received. There's something else, a letter that was
10 sent to Attorney Edwards by I think one of the
11 gentlemen here today, Attorney David Upchurch, dated
12 August 31, 2015. I was sent a copy of that letter.
13 I also --

14 Q. Hang on just a minute. Did this letter,
15 August of 2015 from Mr. Upchurch, have any bearing on
16 any of your opinions?

17 A. Well, only in the sense that it corroborated
18 what I already knew, namely that no heart monitoring
19 had taken place prior to the code that was called.
20 That was confirmed by Attorney Upchurch. It just
21 confirmed what I already knew.

22 MR. PHILLIPS: We'll mark that as the next
23 exhibit number.

24 (Deposition Exhibit No. 13 was marked for
25 identification.)

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1 THE WITNESS: Then I received a statement
2 taken by -- it is an interview conducted by Keith
3 Hainey of somebody identified as HR manager. That
4 was sent to me on July 23, 2015. Mr. Edwards sent
5 that to me. The date of the interview was July 18,
6 2015. This interview is of someone who was at the
7 hospital when this occurred. That was sent to me.
8 BY MR. PHILLIPS:

9 Q. Did that have any bearing on your opinions
10 in the case?

11 A. Not directly. Again, it confirmed the fact
12 that -- it just confirmed the observations set forth
13 that I was already aware of in terms of what was
14 taking place and how the police were conducting
15 themselves and so on. So it blends in consistent
16 with, supportive of my overall understanding of this
17 case.

18 MR. PHILLIPS: We'll mark it as the next
19 exhibit.

20 (Deposition Exhibit No. 14 was marked for
21 identification.)

22 BY MR. PHILLIPS:

23 Q. What else have you reviewed in the case that
24 we've not previously identified, doctor?

25 A. The photo, the disk that came with the

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1 autopsy from Mississippi. I just received a few days
2 ago photos of the autopsy from the medical examiner's
3 office sent to me by Mr. Edwards' office.

4 Q. Have you reviewed the photos?

5 A. Yes, I have looked at them.

6 Q. Did those photos have any bearing on any
7 opinion you hold in the case?

8 A. No, they're of no relevance one way or the
9 other.

10 Q. Have we covered everything that you've
11 reviewed in this case?

12 A. Yes, I believe so.

13 Q. What correspondence do you have with
14 Mr. Edwards --

15 A. You've seen it, here it is.

16 Q. Let me finish the question, if I could.

17 What correspondence do you have from
18 Mr. Edwards or his firm that we've not already marked
19 as an exhibit?

20 A. Nothing. It's what was here.

21 Q. It looks like you have something in your
22 hand?

23 A. Yeah, but you already had this folder.

24 Q. We haven't marked it.

25 MR. PHILLIPS: The correspondence will be

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1 collective Exhibit No. 15.

2 (Deposition Exhibit No. 15 was marked for
3 identification.)

4 BY MR. PHILLIPS:

5 Q. What is in this file?

6 A. This is the one from my autopsy report.
7 That's the label that we put on here in my office
8 with the autopsy number and a couple of letters, and
9 the autopsy report is around somewhere.

10 MR. PHILLIPS: We'll mark these materials as
11 the next exhibit.

12 (Deposition Exhibit No. 16 was marked for
13 identification.)

14 BY MR. PHILLIPS:

15 Q. Have we covered it all or are there things
16 remaining?

17 A. No, I think you have it all.

18 Q. That folder you have in front of you says
19 timeline?

20 A. These are the timelines, yes.

21 Q. Is that separate than what we've already
22 marked?

23 A. Yes, that's different. It's not the
24 timeline that was marked before. These are just
25 other timelines. They're all consistent.

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1 MR. PHILLIPS: We'll mark these as the next
2 exhibit.

3 (Deposition Exhibit No. 17 was marked for
4 identification.)

5 BY MR. PHILLIPS:

6 Q. Did you bring any records that would show
7 your income just from being an expert witness in the
8 last few years?

9 A. No.

10 Q. Are you able to estimate that for us?

11 A. My income from what?

12 Q. Serving as an expert witness, whether it be
13 consultations, depositions, trials, reviews.

14 A. No. All monies that I make go into just one
15 account, Cyril H. Wecht Pathology and Associates. I
16 have no breakdown. We report all of it to our
17 accountant and it all goes in together.

18 Q. What would you estimate would be the
19 percentage of your annual income that you derive from
20 your expert witness work?

21 A. Well, most of my income by far is from
22 autopsies and then what flows from those autopsies.
23 So, gee, I don't know, it's probably maybe roughly
24 two to one, something like that. I can't be sure
25 exactly a percentage.

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1 Q. I'm sorry, I didn't understand the
2 percentage.

3 A. Roughly two to one in terms of the
4 percentages of my income from autopsies and what
5 flows from that with the district attorneys and
6 testimony and so on on the one hand, and then the
7 money from consultations that I make.

8 Q. So express for me as a percentage your
9 estimate of your percentage of your income from your
10 expert witness related work.

11 A. I just gave you the estimate.

12 Q. You gave me a ratio. How would you express
13 it as a percentage?

14 A. It would be about roughly -- well, then a
15 percentage that comes out to be roughly 65/35,
16 something like that.

17 Q. With 65 being which portion?

18 A. Of my autopsies and what flows from the
19 autopsies.

20 Q. Do you advertise your services as an expert
21 witness?

22 A. No.

23 Q. Other than what we've already marked as an
24 exhibit, were you provided any facts or data by
25 Plaintiff's counsel that you considered in forming

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1 your opinions?

2 A. No. I've talked with Mr. Edwards, he's told
3 me a lot of things, but nothing that is startlingly
4 or significantly new and nothing different, no. No,
5 nothing.

6 Q. We talked earlier about your September 28,
7 2015 letter. Remember me showing you a copy of that?

8 A. Yes.

9 MR. PHILLIPS: I want to mark that as the
10 next exhibit.

11 (Deposition Exhibit No. 18 was marked for
12 identification.)

13 BY MR. PHILLIPS:

14 Q. I think you told me earlier that you did not
15 have a copy of the September 28, 2015 letter in your
16 file; correct?

17 A. That's right.

18 Q. Do you know why you didn't retain a copy of
19 that letter?

20 A. Because it was sent to Mr. Edwards marked I
21 think work product for him to look over and tell me
22 if there was anything that I had not addressed. And
23 apparently, and I don't know this as a matter of
24 specific recollection, but I can only infer
25 reasonably that Mr. Edwards probably did not get back

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1 to me until around the time that the final report was
2 generated. But it is exactly the same, with no
3 changes.

4 Q. Do you have an electronic file with any
5 information about this case?

6 A. No.

7 Q. So everything that you have is on paper and
8 there's no electronic file at all?

9 A. I have no electronic files.

10 MR. PHILLIPS: Dr. Wecht, these other
11 counsel have been waiting patiently to question you.
12 I'm going to yield to some of the other gentlemen in
13 the room to ask questions. I may or may not have
14 additional questions when they finish, but I
15 appreciate your time.

16 MR. UPCHURCH: Let's take a brief recess.

17 (Whereupon, a short recess was taken off the
18 record.)

19 - - -

20 E X A M I N A T I O N

21 BY MR. UPCHURCH:

22 Q. Dr. Wecht, my name is David Upchurch. We
23 met immediately prior to your deposition some hours
24 ago. I'll endeavor in my questioning not to be
25 repetitive of Mr. Phillips. I would ask of you if

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1 you don't understand a question that I ask, if you
2 would please let me know that, I'll be more than
3 happy to rephrase the question.

4 In looking at the documents that have been
5 marked as Exhibit No. 4, there were timelines or
6 summaries that were provided to you, and I have a few
7 questions about those.

8 I'm looking at a summary that was sent to
9 you by email dated Tuesday, August 11, 2015 by
10 Ms. Asbridge in Mr. Edwards' office. In that email
11 there is a delineation of some events that gave rise
12 to this lawsuit.

13 There is a note that at 2:30, and I'm
14 quoting now, "Troy smoked at home (a joint); from a
15 batch he had previously smoked from; no issues; Kelli
16 has what's left; Troy a daily smoker; purchases from
17 the same person".

18 Did you make any request to receive a batch
19 of the marijuana that Troy smoked for testing
20 purposes?

21 A. Not that I recall. If there had been any
22 discussion it would have been to have it submitted to
23 NMS to have them do the testing. But no, not that I
24 recall.

25 Q. Do you have any knowledge that that

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1 marijuana that was referred to in the statement I
2 just read you has been tested by AMS or any other
3 laboratory?

4 MR. EDWARDS: NMS.

5 BY MR. PHILLIPS:

6 Q. Sorry. NMS.

7 A. There's a report from NMS on marijuana with
8 a very high level. I don't know if that relates to
9 that batch or not.

10 Q. Do you have any information as to the name
11 of the person from whom Troy purchased his marijuana?

12 A. No.

13 Q. Same question or similar question, several
14 times, several bullets down on this same email, it
15 says "Troy and others gathered around in a circle
16 (doing liquid LSD)".

17 Do you have any information, Dr. Wecht, as
18 to how Troy consumed the LSD that's at issue in this
19 case?

20 A. My recollection is they put something on the
21 back of his hand and licked it or something. That's
22 my understanding.

23 Q. Continuing on that bullet point says, "(Mike
24 Friedman had same vial over a year; Troy used LSD on
25 paper previously while in Chicago from same vial) no

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1 issues".

2 Did you ever make a request of Mr. Edwards
3 to receive a copy of the vial of LSD referenced in
4 this notation that I've just read to you so that it
5 could be tested?

6 A. No.

7 Q. Do you have any knowledge that any such vial
8 of LSD has been tested by any laboratory?

9 A. No, I have no knowledge of anything like
10 that.

11 Q. In this same email, Dr. Wecht, there is a
12 note that talks about the officers' interactions with
13 Mr. Goode. And it says, and it's referencing the
14 attack is referenced in here of one of the police
15 dogs, and the bullet point says this: "At this point
16 Kelli was trying to film incident with cell phone
17 saying, quote, I am filming you, close quote."

18 Did you receive any film from Mr. Edwards
19 depicting the incident at the scene with police and
20 Mr. Goode?

21 A. No.

22 Q. Do I understand correctly from your
23 testimony this morning that because you do not accept
24 excited delirium as a scientific diagnosis, you did
25 not consider that diagnosis as a potential cause of

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1 Mr. Goode's death in this case?

2 A. That would be correct. I mean, I
3 anticipated it and told Mr. Edwards that, but did I
4 consider it? No. Your question contains the answer.

5 Q. Although not stated in this fashion, your
6 opinion is that Mr. Goode's death was secondary to
7 positional asphyxia?

8 A. Secondary? It was caused by positional
9 asphyxiation, yes.

10 Q. Define for me positional asphyxiation.

11 A. Well, in this case it's the full classical
12 hogtied position with the individual, Mr. Goode, in a
13 prone position, that's face, abdomen down, wrists
14 tied behind him together and legs tied together at
15 the ankles and brought up in flexed position at the
16 knees. That's the classical hogtied position.

17 That is the physical scenario in which a
18 person then in my opinion can die as a result of the
19 respiratory compromise and then the subsequent
20 effects on cardiac activity. That's positional
21 asphyxiation.

22 So positional refers to the anatomic lie of
23 the individual, the position of that person. And
24 asphyxiation, deprivation of oxygen or diminution of
25 oxygen. And that to me is the way in which this

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1 works.

2 And then the heart gets insulted and you
3 have the cycle of diminished oxygenation to the brain
4 and then diminished compromise control by the brain
5 of cardiac and respiratory function, which leads to
6 further diminution of oxygen. And that cycle just
7 works very, very rapidly. And then ultimately you
8 have cardiorespiratory arrest and death.

9 Q. Let me read this definition to you of
10 positional asphyxia and see if you agree with it.
11 "Cessation of adequate breathing by means of
12 restraint and can occur by either positioning to
13 compromise the airway, compression to inhibit the
14 respiratory function or a combination of both such
15 mechanisms."

16 A. Well, I agree with it, but I don't think
17 it's complete. Read it one more time, please.

18 Q. Yes, sir. "Cessation of adequate breathing
19 by means of restraint and can occur by either
20 positioning to compromise the airway or compression
21 to inhibit the respiratory function or a combination
22 of both such mechanisms."

23 A. Well, first of all, it's not cessation.
24 Ultimately of course when you go into
25 cardiorespiratory arrest there is cessation, but the

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1 position does not lead to cessation in the way that
2 if something collapses upon you or somebody stuffs
3 something in your mouth or covers up your nose and
4 throat, so-called burking.

5 So I would use diminution, compromise rather
6 than cessation. There was nothing obstructing the
7 airway here at all. And then compression, I wouldn't
8 use that word, it's not compression necessarily. You
9 can have positional asphyxiation without anybody
10 pressing down on your chest, which does occur in many
11 of these cases with one or more policemen pressing
12 down knees, feet, baton or what have you.

13 So no, I would not -- I don't think it's a
14 correctly, fully, properly stated definition from my
15 perspective of positional asphyxiation. No, I don't
16 agree with it. I don't accept that. It's part of
17 it. You can get that happening of course in either
18 of those two ways, but that doesn't depict the entire
19 set of etiological factors.

20 Q. Would it surprise you to know, Dr. Wecht,
21 that I took that definition out of a text that you
22 published?

23 A. Yes, it would. It has to be revised then.
24 What publication is it, if I can ask?

25 Q. Your text Investigating and Prevention of

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1 Officer-Involved Deaths?

2 A. Did I write that?

3 Q. Yes, sir.

4 A. When was that? Where was it published?

5 Q. Don't know.

6 A. I don't mind criticizing myself. Could I
7 just see that again, please.

8 Q. Yes, sir. There's your book, Investigation
9 and Prevention of Officer-Involved Death. You're one
10 of the authors.

11 A. Yes, I wrote that with Dr. Lee and two
12 retired police chiefs.

13 Q. How do you understand in this case that
14 Mr. Goode was hogtied, to use your term; do you
15 understand that his hands and the shackles on his
16 feet were actually bound together where his hands
17 were touching his feet?

18 A. No, I don't think that the feet were brought
19 up to that point. My understanding is that the
20 wrists were tied behind him, his ankles were tied
21 behind him and that there was a long shaft that went
22 up along his back that coursed I guess under or over
23 those two sets of handcuffs.

24 It's not my understanding that the four
25 portions of his upper and lower appendages were

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1 contiguous.

2 Q. Is a person who is obese or a person who has
3 a large abdomen at an increased risk for experiencing
4 positional asphyxia?

5 A. Yes.

6 Q. Is that because the size of the stomach is
7 then -- or the stomach contents are pushed upwards
8 and then there's pressure placed upon the diaphragm?

9 A. More so the liver than the gastric contents,
10 because you don't know whether somebody has eaten or
11 not, obviously they have a big full stomach.

12 No, sir, it's more so the liver which
13 occupies and goes a little bit past the midline from
14 the right side and comes up into the diaphragm.

15 Q. Would we agree, doctor, that Mr. Goode was
16 certainly not obese by any definition?

17 A. Yes. The weights that I see, no, he was not
18 obese.

19 Q. Would you also agree that there are
20 preexisting physical conditions that can increase
21 one's risk for positional asphyxia, such as heart
22 disease?

23 A. Oh, sure. If you have heart disease you
24 would be that much more susceptible, depending upon
25 how severe it is. If you have valvular disease or if

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1 you have atherosclerosis of the coronary arteries,
2 sure, that could further compromise the picture
3 because you already have some compromise of the
4 normal cardiovascular flow.

5 Q. Would bronchitis fall into that list of
6 preexisting diseases that might increase one's risk
7 for positional asphyxia?

8 A. If you had a chronic bronchial condition
9 like asthma, bronchiectasis, or significant chronic
10 bronchitis, it could.

11 Q. What about emphysema?

12 A. Emphysema could, too, yes.

13 Q. What about an exacerbation of an asthmatic
14 condition?

15 A. If somebody has asthma, then that person
16 would be more susceptible to any kind of diminution
17 or deprivation of oxygen because the disease is in
18 place and there is that tendency, and we don't know
19 the etiology of many asthmatic conditions, but
20 there's something there that causes the bronchioles
21 to constrict, producing that kind of obstruction and
22 diminished oxygen flow.

23 So yes, if you have a significant or you
24 have an asthmatic condition, it could make you more
25 susceptible.

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1 Q. Are there any other physical conditions that
2 you would add to that list of conditions that would
3 increase one's risk for experiencing positional
4 asphyxia?

5 A. No. Hepatic, adrenal, cerebral. No,
6 basically, you're dealing with the heart and lungs
7 and the components thereof. So in the case of the
8 heart, obviously the coronary arteries and the
9 valves. And in the case of the lungs, the trachea,
10 somebody could have, you know, we already talked
11 about bronchitis, if he had some problem involving
12 the pharyngeal area, the epiglottic area, the higher
13 area before it goes into the lung tissue.

14 But as far as other body organ systems, no,
15 not getting into psychological things, how it would
16 be handled.

17 Q. My question was dealt to medical conditions.

18 A. Limited to the respiratory and cardiac and
19 if he had anything in the oral pharyngeal system.
20 Then of course if somebody had dentures, that could
21 produce a problem, but we don't have that in this
22 case.

23 Q. You did not find any evidence of underlying
24 heart disease for Mr. Goode, did you?

25 A. No.

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1 Q. You did not find any underlying disease of
2 bronchitis or emphysema?

3 A. No.

4 Q. And found neither grossly nor
5 microscopically any asthmatic condition that you
6 could report, did you?

7 A. That's right.

8 Q. Am I correct in understanding your prior
9 testimony to questions asked by Mr. Phillips that you
10 did not find on your autopsy any evidence of ischemic
11 encephalopathy?

12 A. No. The brain had been sectioned and
13 nothing was grossly evident or microscopically.

14 Q. Am I likewise correct in understanding that
15 you did not find any gross or microscopic evidence of
16 multi-organ system failure?

17 A. That's correct.

18 Q. You discussed with Mr. Phillips some
19 symptoms that you would attribute to the theory of
20 excited delirium, a medical condition that you don't
21 recognize, and we certainly understand that, but see
22 if you'll agree with me about a list of symptoms that
23 are associated with that diagnosis. One would be an
24 individual who is impervious to pain?

25 A. No, I can't agree with that. I'm aware that

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1 people who believe in excited delirium and these
2 police-related deaths, they confer upon the victim
3 literally Superman abilities, they can lift cars and
4 harrow them through space and they don't feel pain
5 and so on. No, I do not. There is nothing that
6 makes the person, that happens to the nervous system,
7 the sensory nerves, impervious to pain. No, I do not
8 agree with that.

9 Q. All right, sir. What about the symptom of
10 having a significant increased or great strength as
11 you just mentioned that you believe that is a symptom
12 of excited deliria?

13 A. I'm aware of that. The answer is this:
14 When you're faced with an emergency, can you
15 sometimes do things that you might not ordinarily
16 consider and so on? Yes. But not the kind of
17 increased physical strength that is attributed to
18 these people by the proponents of excited delirium.
19 No, I do not agree with that. You don't all of a
20 sudden become Clark Kent in disguise.

21 Q. What about hyperthermia?

22 A. Again, I'm aware of that finding. I do
23 agree that in those cases which they classify,
24 categorize as excited delirium that they list
25 hyperthermia. And I've discussed that in this case

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1 it was not present.

2 Q. What about sweating?

3 MR. EDWARDS: Excuse me, did you say hypo or
4 hyperthermia?

5 BY MR. PHILLIPS:

6 Q. Hyper.

7 A. Hyper.

8 Q. What about sweating?

9 A. That would depend to a large degree on the
10 environment. Certainly if you're struggling and so
11 on, it goes on for a period of time, you might begin
12 to sweat. It depends how long a time, how much the
13 struggle is, what kind of clothing, what is the
14 temperature. So that would vary.

15 Q. What about do you believe that bizarre and
16 violent behaviors is a symptom associated with
17 excited deliria?

18 A. Again, I attribute this to the combination
19 of the inability to breathe normally, the entire
20 scenario, your body being bound in that fashion and
21 the police there and yelling at you and so on, I can
22 just imagine the choice epithets that were used,
23 although I have no recordation of that.

24 Combative, yes; when you can't breathe and
25 you're bound in that fashion, I understand why you

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1 would become combative. But again, as you have
2 already stated, what I'm saying is I understand that
3 this is considered to be a component of the excited
4 delirium phenomenon. And I don't accept excited
5 delirium, but I am aware of that sign.

6 Signs are things that you can see, by the
7 way. And symptoms are things that are expressed by
8 the person. So you got a combination of signs and
9 symptoms there.

10 Q. Yes, sir. I'm reading from your book where
11 it says excited delirium symptoms include:

12 Impervious to pain, great strength, hyperthermia,
13 sweating, bizarre and violent behavior, aggression,
14 hyperactivity, hallucinations, confusion and
15 disorientation, foaming at the mouth, drooling and
16 dilated pupils.

17 Do you agree with that list of symptoms
18 associated with excited delirium?

19 A. For those people, yes, who believe in
20 excited delirium, yes, those are the list of signs
21 and symptoms.

22 Q. Do you know whether or not this case has
23 been scheduled for trial?

24 A. No. I have no trial date.

25 Q. Have you been requested to appear at trial

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1 in this case?

2 A. There's been no discussion at all with
3 Mr. Edwards about that, but if I am called to testify
4 pursuant to my report, this deposition, etcetera, I
5 shall testify, but there's been no discussion. I
6 haven't any idea at all what the status of this case
7 is.

8 MR. UPCHURCH: Thank you, sir. That's all
9 the questions I have for you.

10 MR. GASS: Can we go off the record a
11 minute. I have one thing I want to ask that I'm
12 confused on.

13 MR. EDWARDS: We're not going to have two
14 lawyers.

15 MR. GASS: That's why I said we're going off
16 the record.

17 MR. EDWARDS: I just want to make clear that
18 we've got one lawyer per client.

19 (Whereupon, a short recess was taken off the
20 record.)

21 MR. MILLER: My name is Steve Miller, I'm
22 the attorney for Southeastern Emergency Physicians.
23 I don't have any questions for you. Pass the
24 witness.

25 MR. UPCHURCH: Brad, any questions?

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1 MR. DILLARD: Just one or two brief
2 questions.

3 - - -

4 E X A M I N A T I O N

5 BY MR. DILLARD:

6 Q. Doctor, this is Brad Dillard, I represent
7 the Southaven Defendants.

8 You referenced at length in your report the
9 phrase hogtied in conjunction with four-point
10 restraint. In your opinion is there any difference
11 between the phrase hogtied and four-point restraint?

12 A. No, I guess I would take that synonymously.
13 Four-point, right, the two wrists and the two ankles.
14 Some people may use hogtied in a strict classical,
15 limiting it to ankles brought up in hyperflexion to
16 wrists posteriorly, and I would not argue with that
17 then.

18 So that differentiation could be made
19 between that kind of hogtie if that's what somebody
20 is talking about. I am aware, as I was asked earlier
21 a little bit ago, that the ankles were not brought up
22 to the wrists.

23 Q. Your use of the term hogtied then would
24 simply be any type of shackle or device where the
25 ankles and the wrists are bound together regardless

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1 of the length of the chain or the ability to move;
2 would that be correct?

3 A. Well, yeah, in this case where they're all
4 tied, and there's a rod pole or shaft that goes along
5 the length of the body. Yes, that's the way I would
6 use that in this case.

7 Q. Just to be sure I'm clear, doctor, your
8 opinions in this case are limited to Mr. Goode's
9 cause of death; correct?

10 A. If you're asking me am I going to be an
11 expert on -- I've already talked about medical
12 malpractice, I'm not going to express any opinions on
13 that regarding the EMS hospital doctors and nurses,
14 and I'm not going to express opinions other than that
15 which I know that fall into my domain as I have
16 referred to several times today regarding law
17 enforcement agencies and so on.

18 But if this were, let's say, an analog of a
19 medical malpractice case against law enforcement
20 officers, no, I'm not going to be expressing opinions
21 on that. Just the overall scenario, but not breaking
22 it down into specific actions attributed to any
23 particular officer.

24 Q. Yes, sir. The full scope of your opinions
25 has been discussed during the examination primarily

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1 by other counsel; correct?

2 A. Yes. I do not believe that there's anything
3 that was not covered. Mr. Edwards will come in with
4 his own approach, but I think everything has been
5 covered. I'm not aware of any area -- I may be asked
6 other questions about specific actions here and
7 there, but there's nothing that we haven't talked
8 about.

9 MR. DILLARD: Thank you. No further
10 questions.

11 MR. PHILLIPS: I have one housekeeping
12 matter. Doctor, I was told I need to bring a check
13 if we went over four hours. What is the amount
14 owing?

15 THE WITNESS: \$500.

16 MR. PHILLIPS: I'm about to give you that
17 check now.

18 THE WITNESS: Thank you.

19 MR. GASS: Just housekeeping on the rest of
20 the exhibits, madam court reporter, are you going to
21 give us hard copies, electronic copies?

22 COURT REPORTER: Whatever you prefer.
23 Please let me know what you would like.

24 MR. EDWARDS: For the Plaintiff, I want an
25 electronic copy, E-Tran, and electronic copies of the

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1 exhibits. And Dr. Wecht will get the hard back.

2 THE WITNESS: And a hard copy of the
3 transcript?

4 MR. EDWARDS: I will get you that.

5 COURT REPORTER: Do you want to read the
6 transcript?

7 MR. EDWARDS: Do you want to read and sign?

8 THE WITNESS: I'll need a hard copy unless
9 you tell me.

10 MR. EDWARDS: Let's reserve signature.

11 MR. UPCHURCH: I would like an electronic
12 and a hard copy, and I assume that will come with a
13 condensed and a word index.

14 MR. PHILLIPS: Marty Phillips, I get the
15 original since I set the deposition and of course
16 copies of all the exhibits. I also want an
17 electronic copy, and will you provide a condensed
18 version as well?

19 COURT REPORTER: Yes.

20 MR. MILLER: Same for me, Stephen Miller.
21 Not the original, but a copy.

22 MR. DILLARD: This is Brad Dillard, I'll
23 take the same as Mr. Upchurch ordered, please.

24 (Deposition Exhibit Nos. 19 through 35 were
25 marked for identification.)

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1 MR. GASS: Let me make a record of what has
2 been marked. Exhibit No. 19 is an empty folder.
3 What I'm asking is that there be just a photocopy of
4 these folders with the exhibit sticker.

5 Exhibit No. 20 has papers in it, so both the
6 outside of the folder and the papers that are inside
7 of it. Exhibit No. 21, same thing, photocopy of the
8 outside plus the papers that are in it. Exhibit
9 No. 22, photocopy of the outside plus the papers
10 inside.

11 Exhibit No. 23 is a CD disk that we would
12 want a copy of. Exhibit No. 24, outside of the
13 folder plus the papers that are in it. Exhibit
14 No. 25, the 1-11-2016 Purdue letter. Exhibit No. 26
15 email packet. Exhibit No. 27 Wecht letter of
16 December 5, 2016. Exhibit No. 28, the packet of
17 photos plus a copy of all photos inside.

18 Exhibit No. 29, just a copy of the empty
19 folder. Exhibit No. 30, copy of the empty folder.
20 No. 31, a copy of the empty folder. 32, copy of the
21 empty folder. 33, a complete copy. And his slides
22 have been marked, there are two yellow trays, one is
23 marked Exhibit No. 34 and one is marked Exhibit
24 No. 35. Those we don't need copies of.

25 MR. EDWARDS: Show that those will be

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1 retained by Dr. Wecht.

2 MR. PHILLIPS: Lay those on the copier and
3 make a copy of the front page.

4 (At 1:35 p.m., the deposition was concluded.
5 Signature was not waived.)

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ORIGINAL

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ERRATA SHEET

1	PAGE	LINE CHANGE/CORRECTION	REASON FOR CHANGE/CORRECTION
2			
3			
4	<u>41</u>	<u>lines 1-8</u>	
5		<u>Correction -</u>	
6		<u>I had received a video of the</u>	
7		<u>scene from Attorney Edwards.</u>	
8		<u>I viewed that video as part</u>	
9		<u>of my overall review and analysis of</u>	
10		<u>this case.</u>	
11			<u>Cyril H. Wecht MD</u>
12			<u>6 April 2017</u>
13			
14			
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C E R T I F I C A T E

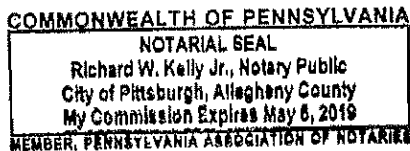
I, CYRIL H. WECHT, MD, JD, do hereby certify that I have read the foregoing transcript and it is a true and correct copy of my deposition, except for the changes, if any, made by me on the attached Deposition Correction Sheet.

Cyril H. Wecht
CYRIL H. WECHT, MD, JD

Date

6 April 2017

*Saworn to & subscribed
before me this 7th
day of April, 2017*

W. Kelly

Alpha Reporting Corporation

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1 COMMONWEALTH OF PENNSYLVANIA)
2) SS
3 COUNTY OF WASHINGTON)
4

5 CERTIFICATE

6 I, Kathy D. Landock, a Notary Public in and
7 for the Commonwealth of Pennsylvania, do hereby
8 certify that the witness, CYRIL H. WECHT, MD, JD, was
9 by me first duly sworn to testify the truth, the
10 whole truth, and nothing but the truth; that the
11 foregoing deposition was taken at the time and place
12 stated herein; and that the said deposition was
13 recorded stenographically by me and then reduced to
14 typewriting under my direction, and constitutes a
15 true record of the testimony given by said witness,
16 all to the best of my skill and ability.

17 I further certify that I am not a relative,
18 employee or attorney of any of the parties, or a
19 relative or employee of either counsel, and that I am
20 in no way interested directly or indirectly in this
21 action.

22 IN WITNESS WHEREOF, I have hereunto set my
23 hand and affixed my seal of office this 24th day of
24 March, 2017.

25
Kathy D. Landock, Notary Public
Certified Realtime Reporter

My Commission Expires:
March 24, 2019

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